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REPORT TO COUNCIL AND SUNNYVALE FINANCING AUTHORITY

SUBJECT

Adopt Resolutions to Authorize Issuance of Lease Revenue Bonds to Finance the Civic Center Phase I Project in an Amount not to exceed \$160 Million Including Financing and Closing Costs; Approve Financing Team, and Authorize the City Manager/Executive Director or the Finance Director/Treasurer to Execute all Related Documents

REPORT IN BRIEF

Staff is recommending the City Council and the Sunnyvale Financing Authority (the “Authority”) authorize the issuance of bonds to finance \$150 million of the costs of the Civic Center Phase I Project (the “Project”), approve the financing team that implements the issuance of the Bonds, and Authorize the City Manager/Executive Director or the Finance Director/Treasurer to execute all related documents.

BACKGROUND

The Sunnyvale Civic Center, located at the corner of El Camino Real and Mathilda Avenue, is home to the City’s primary administrative facilities: City Hall, Library, and Department of Public Safety Headquarters. Civic Center buildings range in age between 30 and 60 years old.

In early 2015, the City began an extensive community engagement process to evaluate how facilities at the Civic Center could be renovated or replaced. Through this process, the City developed a Needs Assessment, Vision Statement, and Success Criteria for the Project that were intended to guide further planning efforts.

On October 25, 2016, Council approved a scope of services for the Civic Center Modernization Project Master Plan (RTC No. 16-0072). The scope outlined specific consulting services needed to complete a long-term Master Plan for the Civic Center and further defined what elements of the Project would be implemented as part of the first phase of construction.

A multi-step public procurement process was used to solicit interest and select a consultant to complete the Civic Center Master Plan. On May 23, 2017, Council awarded a contract to SmithGroup JJR (now SmithGroup Inc.) for master planning services (RTC No. 17-0136). SmithGroup Inc. (SmithGroup) is an architecture firm with extensive experience preparing campus master plans and designing modern, sustainable and attractive buildings.

On July 25, 2017 Council reviewed options for expanding the existing Public Safety Building and considered whether the City Hall Annex Building could be renovated and used for NOVA Workforce Services (RTC No. 17-0617). After considering the options, Council gave direction to pursue an addition to the existing Public Safety Building of approximately 11,000 square feet as part of Phase 1 of the Civic Center Project. Also, that the City Hall Annex Building be replaced and space for NOVA

Workforce Services be included in City Hall.

In 2017, two Master Plan options for the Civic Center were developed for building placement, site circulation, parking facilities, and open space features. In November 2017, the City Council selected Option 1 - Plaza as the alternative for further environmental analysis (RTC No. 17-0835).

On September 25, 2018, Council adopted a resolution to certifying a Program Environmental Impact Report ("EIR") for the Civil Center Master Plan, including a Mitigation Monitoring and Reporting Program (MMRP) and a Statement of Overriding Considerations and directed City Staff to proceed with design for a Net Zero City Hall Building (RTC No. 18-0799).

On December 4, 2018, Council voted to award the Phase 1 design contract to SmithGroup (RTC No. 18-1008).

Phase I comprises the following building and site components:

- A new City Hall building which locates staff currently in the Main City Hall, South Annex, Annex, and Sunnyvale Office Center in one building;
- An addition to the Department of Public Safety Building, housing an emergency operations center (EOC) and detectives' bureau;
- Renovation of portions of the Public Safety Building supporting the current needs and technical functions of the Public Safety Officers; and
- Demolition of the existing City Hall, South Annex, Annex, and Sunnyvale Office Center and creation of approximately six acres of plazas and open space.

On August 27, 2019 Council approved the Schematic Design, the Highly Recommended and Recommended Cost Saving Strategies, and directed Staff to proceed with the design and construction procurement for the Civic Center Phase 1 project (RTC No. 19-0592).

On February 25, 2020 Council awarded the Civic Center Phase 1 construction management services to Jacobs Project Management Co (RTC No. 20-0168).

On July 14, 2020, Council approved changes to the Project as described in the Addendum to the EIR.

EXISTING POLICY

Council Fiscal Policy 7.1.8 - Debt Management

ENVIRONMENTAL REVIEW

On September 25, 2018, the City Council certified a Program EIR for the Civil Center Master Plan, including a Mitigation Monitoring and Reporting Program (MMRP) and a Statement of Overriding Considerations for two significant and unavoidable impacts (cultural resources and noise) (RTC No. 18-0799). On July 14, 2020, Council considered an Addendum to the Program EIR when it approved changes to the Civic Center Modernization Project as described in the Addendum to the Program EIR. The proposed action is a financing mechanism that does not involve any changes to the Project analyzed in the EIR and Addendum. Therefore, no additional environmental review is required pursuant to the California Environmental Quality Act ("CEQA") Guidelines 15168(c)(2).

DISCUSSION

The City has been reserving and planning for the renovation or replacement of its aging Civic Center facilities for many years, accumulating \$130 million in cash funding with the anticipation of borrowing for the remaining project needs. The funds represent a portion of the costs of the Project. The City will need to fund the remaining cost through the issuance of the Bonds. In the current market, rates are near historic lows. This issuance would enable the City to spread the cost of the new facilities on a long-term basis to the taxpayers and users of the facility over its useful life.

The Project is proposed to be funded by the issuance of Bonds in an amount not to exceed \$160 million. The expected issuance amount is anticipated to be lower to yield \$152 million in Bond proceeds, but the higher limit provides flexibility in dynamic market conditions. Financing these costs on a long-term basis at current interest rates would result in approximately \$7.7 million in average annual debt service and total debt service of \$240.6 million over the entire term of the financing. The Bonds would be issued by the Authority.

Staff recommends that the Bonds have a final maturity of April 1, 2052. The Bonds would pay interest only for the first three years during construction with 29 years of level debt service (principal and interest payments) thereafter. Based on current market conditions, the all-in true interest cost of the Bonds will be less than 3.0 percent, including transaction costs.

Staff also recommends that the Bonds be designated as “Green Bonds.” The basis for this designation is that the new City Hall will be a net-zero energy facility and has been designed as LEED Platinum-certified. In addition, the Emergency Operations Center addition has been designed to LEED Gold-certified. By being designated as “Green Bonds”, the Bonds may attract a specific universe of socially motivated investment funds and other investors.

Use of Negotiated Sale

There are two ways that the City can sell bonds: competitive and negotiated. The City has generally issued bonds on a negotiated basis. Staff is recommending a negotiated sale for the bonds due to the complexity of the transaction, market volatility surrounding the Presidential election and the competing supply of bonds expected from other public agencies. In a negotiated sale, the City works with an underwriting team to pre-market the bonds to investors, allowing an opportunity to educate investors about the City’s credit and to obtain investor feedback that will inform important bond structuring matters.

With a competitive sale, the City would set a date and time at which any underwriting firm may submit a bid to purchase the bonds and the City would award the bonds to the firm that offers the lowest true interest cost. A competitive sale is best suited under more stable market conditions with more limited competing supply as the demand for the bonds from underwriting firms and investors would be higher.

Approval of Financing Team

The Financing Team consists of the bond counsel, disclosure counsel, municipal advisor, and underwriters. Staff is recommending that the bond counsel, disclosure counsel, municipal advisor, and underwriters be approved by Council and the Authority.

Municipal Advisor

Ross Financial, San Francisco, CA. Ross Financial is a San Francisco-based financial advisory firm

that is focused solely on municipal bonds. Its principal, Peter Ross, has more than forty years of experience in the municipal bond market, having served in the capacities of bond counsel, underwriter, and financial advisor over the course of his career. Ross Financial performs work for many prominent municipalities in California, including the Cities of San Jose, San Francisco, Burbank, Whittier, the Santa Clara Valley Transportation Authority, SamTrans, and Peninsula Corridor Joint Powers Board. Mr. Ross has been the City's municipal advisor for over twenty years, most recently supporting the City on the Sunnyvale Clean Water Program Water Infrastructure Financing and Innovation Act (WIFIA) Loan negotiations as well as with the issuance of the City's 2017 Water and Wastewater Revenue Refunding Bonds, the 2010 Solid Waste revenue bonds and the 2009 Variable Rate Certificates of Participation.

Ross Financial proposes a fee of \$75,000 plus out-of-pocket expenses (likely minimal, if any). This fee will be paid from the proceeds of the Bonds and is contingent upon their sale and closing.

Bond Counsel and Disclosure Counsel

Bond counsel is responsible for drafting legal documents and ensuring that the Bonds are issued in compliance with all applicable state and federal tax laws. Bond counsel delivers an opinion that the Bonds are legally issued and interest on the Bonds is tax-exempt for Federal and California income tax purposes. Disclosure Counsel drafts the Official Statement and provides the opinion that the Official Statement is accurate in all material respects.

The law firm of Jones Hall is recommended as legal counsel. Jones Hall is a leading public finance law firm in the State and serves local governments throughout California. The firm has served as bond and/or disclosure counsel on several previous financings including the Sunnyvale Clean Water Program WIFIA Loan negotiations, 2017 Water and Wastewater Revenue Refunding Bonds, Variable Rate Certificates of Participation financing for the Government Center Site Acquisition Project, the Mello-Roos financing for the Downtown Parking Project, and the 2001 Utilities Bonds.

Jones Hall proposes a fee of \$175,000 for both bond counsel services and disclosure counsel services. This fee will be paid from the proceeds of the bonds and is contingent on their sale and closing.

Underwriters

Staff conducted a request for proposals ("RFP") process for underwriting services for the bonds. The City distributed the RFP to 16 firms and received 10 proposals. Based on the responses, Stifel, Nicolas was selected as the Senior Manager and J.P Morgan Securities, BofA Securities, and Raymond James as co-managers (collectively the "Underwriters").

Stifel is one of the most active underwriting firms in the California municipal bond market, particularly with respect to lease revenue bonds and certificates of participation.

The co-managers bring strong California financing experience and distribution capabilities in support of Stifel's efforts.

The underwriters will be compensated by purchasing the Bonds at discount to which they sell the Bonds to investors. The expected underwriters' discount (including expenses) for the underwriting team is approximately 0.25% to 0.30% times the par amount of bonds issued.

Trustee

Staff is recommending U.S. Bank National Association, San Francisco, CA as the Trustee for this transaction. The Trustee is responsible for holding the bond proceeds, repaying the bonds on behalf of the City and enforcing rights and remedies on behalf of the bondholders.

Overview of the Lease Revenue Bond Financing Structure

Staff is proposing a lease-leaseback financing in which the City will lease certain assets to the Authority and then lease back the assets from the Authority; the Bonds will be secured by lease payments made by the City for use and occupancy of the assets. The leased assets will initially include the existing City Hall, the Public Safety Building, and the Corporation Yard and the underlying land of each parcel (the "Initial Assets"). Once constructed and occupied, the new City Hall and the expanded Public Safety Building, and underlying land, will remain subject to the lease and other assets will be released. The approach, also common with California public agencies in their lease financings, obviates the need to fund approximately three years of capitalized interest from bond proceeds, reducing the issue size by approximately \$15 million. Investors like this approach as it eliminates the potential impacts of construction risks.

Documents to Approve

Site Lease (Attachment 1)

To effectuate the asset transfer structure, the Authority will lease the Initial Assets from the City in consideration of issuing the Bonds.

Lease Agreement (Attachment 2)

The Authority will lease the Initial Assets back to the City pursuant to the Lease Agreement. The City will covenant in the Lease Agreement to budget and appropriate funds for the scheduled lease payments in an amount sufficient to pay debt service on the Bonds on an annual basis. If the City fails to make the scheduled lease payments, US Bank, as Trustee for the Bonds (the "Trustee") could sue the City to make the scheduled lease payments or the Trustee could take possession of and re-let the leased assets.

Assignment Agreement (Attachment 3)

Under the Assignment, payments received by the Authority under the Lease Agreement will be assigned to the Trustee.

Indenture of Trust

The Bonds will be issued under the terms of an Indenture of Trust (the "Indenture"), between the Authority and the Trustee. The Indenture contains provisions relating to the terms of the Bonds, the funds in which Bond proceeds and lease payments will be held, the security for the Bonds, events of default, remedies that the Trustee may pursue on behalf of Bondholders and related provisions.

Official Statement

This is the disclosure document, like a prospectus, that describes the plan of finance, the terms of the Bonds, security features, City financial and demographic information, any potential risks, and other information relevant to a bondholder's decision to purchase the Bonds. During the pre-marketing period, the Official Statement is distributed in preliminary form. After pricing, when the final Bond terms are known, the Official Statement is distributed to investors in final form.

Continuing Disclosure Certificate

In the Continuing Disclosure Certificate, the City will covenant to the underwriters that it will provide annual updates to certain information provided in the Official Statement and immediate updates to certain material events (e.g., rating changes, Bond redemptions). The City will cause these updates to be posted to a website (“Electronic Municipal Market Access”) that is accessible by anyone.

Bond Purchase Agreement

On a “pricing date,” the Underwriters, the City and the Authority will enter into the Bond Purchase Agreement that will set forth the final purchase price of the Bonds, final interest rates and redemption features and the conditions under which the Underwriters will purchase the 2020 Lease Revenue Bonds.

Variable Rate Demand Certificates of Participation

The City has approximately \$9.65 million of outstanding certificates of participation secured by a lease of the Government Center site (Sunnyvale Office Center). The City will be using this site as a staging area during the construction of Phase I. After construction, the Government Center will be demolished. The City currently has set aside approximately \$7.5 million in various reserve funds for debt repayment. To avoid potential state law and Federal tax law complications associated with maintaining this debt outstanding, the City will be contributing approximately \$2.1 million from the cash that has been accumulated for the Civic Center project to repay the Government Center certificates of participation. Because of this contribution, the City will be financing approximately \$152 million of Project costs rather than \$150 million.

Authority and City Resolutions

Two resolutions approving the sale need to be approved, one by the City and one by the Authority. The resolutions approve the sale, the indenture and other related documents needed to complete the transaction.

Sunnyvale Financing Authority

The Authority was originally established as a Joint Powers Authority between the City and the Sunnyvale Redevelopment Agency (now the Sunnyvale Redevelopment Successor Agency). The Successor Agency will be dissolved once it has repaid all its enforceable obligations, removing one of the partners to the JPA. The earliest this could occur is in 2022 when the 1998 Certificates of Participation (Parking Facility) debt is retired will requiring the dissolution of the Successor Agency. Staff has consider establishing alternate authorities and will most likely establish a Parking Authority to manage the City’s parking structures and overall parking in the downtown. This would also give the City a mechanism to issue debt for the downtown if needed.

FISCAL IMPACT

The City recently publicly opened bids for the Project, receiving one bid. This bid has been deemed responsive and responsible and is planned for award by Council on October 27. The bid is substantially under the engineers estimate for the construction on the project. Staff is recommending Council approve financing the original full \$152 million in project costs and reserving the savings in the project budget for unanticipated costs (e.g. unknown issues uncovered during the public safety building remodel). Following completion of the Project, those funds will be reserved for future infrastructure needs such as the renovation or replacement of the City’s aged fire stations, Civic Center Phase 2 improvements, or the Corporation Yard Renovation.

Senate Bill 450 - (Chapter 625 of the 2017-2018 Session of the California Legislature) ("SB 450") requires that the governing body of a public body obtain prior to authorizing the issuance of bonds or other obligations with a term of greater than 13 months, a good faith estimate of the following information in a meeting open to the public. This staff report, which is informed by debt service schedules generated by Stifel as senior managing underwriter, satisfies SB 450.

The estimated true interest cost of the Bonds, based on interest rates as of October 5, 2020 (plus a cushion of 0.50%) is 2.9%.

Estimated transaction costs for the Bonds are approximately \$720,000 and will be paid from Bond proceeds. These costs primarily include rating agency fees, the underwriters' discount, the City's municipal advisor, bond and disclosure counsel fees, title insurance costs.

Total annual debt service on the Bonds, based on current market conditions, is estimated at \$7.7 million assuming no prepayments. Additionally, the City will be responsible for paying the Trustee an annual fee of approximately \$5,000 per year.

The FY 2020/21 Budget includes estimated debt service in the General Fund of approximately \$9 million per year, with offsetting rental payments of \$6.2 million per year from NOVA and the various enterprise funds that use the facility. The rent from NOVA is planned to be subsidized by the general fund by about \$850,000 annually. While debt service on the Bonds will not escalate, the offsetting rental payments (and the subsidy) are scheduled to escalate by 3% per year. It is estimated that the net rental payments (including operating costs) will exceed the annual debt service by FY 2030/31.

The preliminary results of the bidding process indicate a bid that is approximately \$50M less than anticipated. Given the complexity of the funding sources for this project (General Fund, Park Dedication Fund Revenues), staff is presenting a second alternative to finance an amount of not to exceed \$135 million that would yield proceeds of \$125 million. Given that some of the funding sources are restricted, it is too early in the bid evaluation process to determine the final amount needed for financing a lower amount.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, Sunnyvale Public Library and Department of Public Safety. In addition, the agenda and report are available at the Office of the City Clerk and on the City's website. Additionally, a Notice of Public Hearing Regarding Financing of Public Capital Improvements was published in the San Jose Mercury News on October 8, 2020 and in the Sunnyvale Sun on October 9, 2020.

ALTERNATIVES

City Council:

1. Adopt Resolution to Authorize Issuance of Lease Revenue Bonds (the "Bonds") to Finance the Civic Center Phase I Project in an Amount not to exceed \$160 Million Including Financing and Closing Costs; Approve the Financing Team that implements the issuance of the Bonds, and Authorize the City Manager or the Finance Director to Execute all Documents related to, which include the Bond Purchase Agreement, the Preliminary Official Statement (and ultimately the Official Statement), the Continuing Disclosure Certificate, the Sunnyvale Lease, and the Sunnyvale Site Lease, the issuance of the Bonds and retaining the Financing Team.

2. Adopt Resolution to Authorize the Issuance of the Bonds to Finance the Civic Center Phase I Project but in an amount not to exceed \$135 million Including Financing and Closing Costs and Authorize the City Manager or the Finance Director to Execute all Documents related to, which include the Bond Purchase Agreement, the Preliminary Official Statement (and ultimately the Official Statement), the Continuing Disclosure Certificate, the Sunnyvale Lease, and the Sunnyvale Site Lease, the issuance of the Bonds and retaining the Financing Team.
3. Do not authorize the issuance of the Bonds.

Sunnyvale Financing Authority:

1. Adopt Resolution to Authorize Issuance of Lease Revenue Bonds (the “Bonds”) to Finance the Civic Center Phase I Project in an amount not to exceed \$160 million Including Financing and Closing Costs and Authorize the Executive Director or the Treasurer to Execute all Documents related to, which include the Bond Purchase Agreement, the Assignment Agreement, the Indenture of Trust, the Sunnyvale Lease, and the Sunnyvale Site Lease, the issuance of the Bonds and retaining the Financing Team.
2. Adopt Resolution to Authorize Issuance of Lease Revenue Bonds (the “Bonds”) to Finance the Civic Center Phase I Project in an amount not to exceed \$135 million Including Financing and Closing Costs and Authorize the Executive Director or the Treasurer to Execute all Documents related to, which include the Bond Purchase Agreement, the Assignment Agreement, the Indenture of Trust, the Sunnyvale Lease, and the Sunnyvale Site Lease, the issuance of the Bonds and retaining the Financing Team.
3. Do not authorize the issuance of the Bonds.

STAFF RECOMMENDATION

City Council:

1. Adopt Resolution to Authorize Issuance of Lease Revenue Bonds (the “Bonds”) to Finance the Civic Center Phase I Project in an Amount not to exceed \$160 Million Including Financing and Closing Costs; Approve the Financing Team that implements the issuance of the Bonds, and Authorize the City Manager or the Finance Director to Execute all Documents related to, which include the Bond Purchase Agreement, the Preliminary Official Statement (and ultimately the Official Statement), the Continuing Disclosure Certificate, the Sunnyvale Lease, and the Sunnyvale Site Lease, the issuance of the Bonds and retaining the Financing Team.

Sunnyvale Financing Authority:

1. Adopt Resolution to Authorize Issuance of Lease Revenue Bonds (the “Bonds”) to Finance the Civic Center Phase I Project in an amount not to exceed \$160 million Including Financing and Closing Costs and Authorize the Executive Director or the Treasurer to Execute all Documents related to, which include the Bond Purchase Agreement, the Assignment Agreement, the Indenture of Trust, the Sunnyvale Lease, and the Sunnyvale Site Lease, the issuance of the Bonds and retaining the Financing Team.

Prepared by: Tim Kirby, Director of Finance/Treasurer

Reviewed by: Teri Silva, Assistant City Manager/Assistant Executive Director

Approved by: Kent Steffens, City Manager/Executive Director

ATTACHMENTS

1. Sunnyvale Site Lease
2. Sunnyvale Lease Agreement

3. Sunnyvale Assignment Agreement
4. Sunnyvale Financing Authority Indenture of Trust
5. Preliminary Official Statement
6. Bond Purchase Agreement
7. Continuing Disclosure Certificate
8. Sunnyvale Draft Resolution
9. Sunnyvale Financing Authority Draft Resolution