



Agency Meeting: September 20, 2011

SUBJECT: Resolution of the Redevelopment Agency of the City of Sunnyvale Approving and Authorizing the Execution of the Agency Transfer Payment Agreement with the City of Sunnyvale Pursuant to Part 1.9 of the Redevelopment Law

BACKGROUND

As part of the FY 2011/2012 State budget adoption, ABX1 26 (the Dissolution Act) and ABX1 27 (the Voluntary Program Act) were enacted into law that fundamentally restructured the California Community Redevelopment Law. The Dissolution Act immediately suspended all new redevelopment activities and dissolved all redevelopment agencies, effective October 1, 2011. The Voluntary Program Act allows redevelopment agencies to avoid dissolution if their sponsoring community opted into a Voluntary Alternative Redevelopment Program that requires annual contributions to local schools and special districts.

On August 11, 2011, the California Supreme Court agreed to review the California Redevelopment Association and the League of California Cities petition challenging the constitutionality of the Acts. The Court's order, as modified on August 17, 2011, stays the Voluntary Program Act and the dissolution aspects of the Dissolution Act pending the Court's determination regarding the constitutionality of the Acts. The Court anticipates making a final decision by January 15, 2012. However, the Stay left most of the suspension provisions of the Dissolution Act in effect. Thus, until the Court makes a final decision, redevelopment agencies are prohibited from activities except in connection with items defined as existing enforceable obligations. Correspondingly, Sunnyvale's Agency Board members adopted an Enforceable Obligation Payment Schedule on August 23, 2011 (RDA 11-004).

The Voluntary Program Act provides that if a sponsoring community desires to continue the existence of its redevelopment agency, then, the sponsoring community must make certain remittance payments to local schools and other entities, and the sponsoring community must adopt an ordinance (the Continuation Ordinance) to participate in the Voluntary Program. On September 13, 2011, the City of Sunnyvale, as the sponsoring community, adopted the Continuation Ordinance to keep the Redevelopment Agency of the City of Sunnyvale in existence and to participate in the Voluntary Program (RTC 11-174).

In order for the City to comply with both the statutory deadline for the adoption of the Continuation Ordinance, and the Court's order set forth in the Stay, staff, in consultation with the City Attorney, and Agency special counsel Goldfarb Lipman, determined that the City should proceed with the existing schedule for the adoption of the Continuation Ordinance, and that the Continuation Ordinance should be conditioned so that it shall only become effective upon the Court lifting the Stay, and ultimately deciding that the Voluntary Program Act is constitutional.

EXISTING POLICY

The Redevelopment Implementation Plan Goal 1 states: *Meet the Agency's Existing Financial and Administrative Obligations*

DISCUSSION

The remittance payments required under the Voluntary Program Act are to be made in two equal installments each fiscal year by January 15th and May 15th. Sunnyvale's payment is calculated to be \$3,650,428 for FY 2011/2012. The payment for FY 2012/2013 is estimated to be \$900,000 and will increase with the increase in tax increment through the rest of the life of the redevelopment plan. The payments are the obligation of the City, not the Agency. However, section 34194.2 of the Voluntary Program Act provides that the City and the Agency can enter into an agreement (the Agency Transfer Payment Agreement) whereby the Agency transfers a portion of its tax increment to the City for the City's use in making the remittance payments required under the Voluntary Program Act.

The timing for approving the Agency Transfer Payment Agreement is important in order to be able to place the debt on the Recognized Obligation Payment Schedule and on the annual Statement of Indebtedness which are due by September 30, 2011. Future indebtedness that is not listed on the Statement of Indebtedness will trigger greater payments to the State in FY 2012/2013 and later years. In order for the Agency to comply with both the statutory filing deadlines and the Court's order set forth in the Stay, the Agency Transfer Payment Agreement is conditioned to be authorized and executed by the City and the Agency now, but only become effective upon the Court lifting the Stay, and ultimately deciding that the Voluntary Program Act is constitutional.

FISCAL IMPACT

Approval of the Agency Transfer Payment Agreement will allow the Agency to transfer a portion of its tax increment to the City in an amount not to exceed the remittance payment made by the City. If the Agreement is not approved, no transfer payments can be made to the City toward the remittance payment totaling approximately \$18 million over the life of the redevelopment plan.

PUBLIC CONTACT

Public contact was made by posting the Agency 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 Web site.

ALTERNATIVES

1. Approve a Resolution of the Redevelopment Agency of the City of Sunnyvale approving and authorizing the execution of the Agency Transfer Payment Agreement with the City of Sunnyvale pursuant to Part 1.9 of the Redevelopment Law.
2. Do not adopt a Resolution. If Resolution is not adopted, the Agency will not be able to make any transfer payments to the City toward the remittance payment.

RECOMMENDATION

Staff recommends that the Agency Board approve Alternative 1, to approve a Resolution of the Redevelopment Agency of the City of Sunnyvale approving and authorizing the execution of the Agency Transfer Payment Agreement with the City of Sunnyvale pursuant to Part 1.9 of the Redevelopment Law.

Although a stay has been issued on the Voluntary Program Act, after consultation with the City Attorney, and Agency special counsel Goldfarb Lipman, staff recommends that the Agency move forward with the Agency Transfer Payment Agreement now to ensure that Sunnyvale is in the best position in the future. The Agreement is conditioned upon the lifting of the stay and the Court's determination that the Voluntary Program Act is constitutional.

Reviewed by:

Grace K. Leung, Treasurer, Redevelopment Agency
Prepared by: Brice McQueen, Redevelopment Manager

Reviewed by:

David Kahn, General Counsel, Redevelopment Agency

Approved by:

Gary M. Luebbers
Executive Director, Redevelopment Agency

Attachments

- A. Resolution of the Redevelopment Agency of the City of Sunnyvale Approving and Authorizing the Execution of the Agency Transfer Payment Agreement with the City of Sunnyvale Pursuant to Part 1.9 of the Redevelopment Law
- B. Agency Transfer Payment Agreement

RESOLUTION NO. _____**RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF SUNNYVALE APPROVING AND AUTHORIZING THE EXECUTION OF THE AGENCY TRANSFER PAYMENT AGREEMENT WITH THE CITY OF SUNNYVALE PURSUANT TO PART 1.9 OF THE REDEVELOPMENT LAW**

WHEREAS, pursuant to the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.; the "Redevelopment Law"), the City Council (the "City Council") of the City of Sunnyvale (the "City") adopted Resolution No. 2600 on November 19, 1957 declaring the need for the Redevelopment Agency of the City of Sunnyvale (the "Agency") to function in the City; and

WHEREAS, the City Council adopted Ordinance No. 1796-75 on November 26, 1975 adopting the Redevelopment Plan (the "Redevelopment Plan") for the Central Core Redevelopment Project Area (the "Project Area"), as amended from time to time. The Redevelopment Plan set forth the plan for redevelopment of the Project Area; and

WHEREAS, the Agency is responsible for implementing the Redevelopment Plan pursuant to the Redevelopment Law; and

WHEREAS, as part of the 2011-12 State budget bill, AB x1 26 (the "Dissolution Act") and AB x1 27 (the "Voluntary Program Act"); collectively, the "Redevelopment Restructuring Acts") have been enacted to significantly modify the Redevelopment Law generally as follows:

- The Dissolution Act immediately suspended all new redevelopment activities and incurrence of indebtedness, and dissolves redevelopment agencies effective October 1, 2011; and
- The Voluntary Program Act , through the addition of Part 1.9 to the Redevelopment Law ("Part 1.9"), establishes a voluntary alternative redevelopment program whereby the Agency is authorized to continue to exist upon the enactment of an ordinance by the City to comply with Part 1.9, including payment of an annual remittance to the County Auditor -Controller (the "Opt-In Ordinance"); and

WHEREAS, on August 11, 2011, the California Supreme Court (the "Court") agreed to review the California Redevelopment Association and League of California Cities' petition challenging the constitutionality of the Redevelopment Restructuring Acts and issued an order granting a partial stay on specified portions of the Redevelopment Restructuring Acts, as modified on August 17, 2011 (the "Stay"), including a stay of the provisions of the Voluntary Program Act; and

WHEREAS, the City has enacted the Opt-In Ordinance prior to consideration of this Resolution , conditioned upon the lifting of the Stay and the Court's determination that the Voluntary Program Act is constitutional; and

WHEREAS, Section 34194.2 of the Redevelopment Law authorizes the Agency to enter into an agreement with the City whereby the Agency agrees to transfer a portion of its tax increment to the City, in an amount equal to the annual remittance required under Chapter 3 of Part 1.9 to the County Auditor-Controller; and

WHEREAS, for reasons further set forth in the staff report accompanying this Resolution (the "Staff Report"), the City and the Agency desire to enter into an agreement, whereby the Agency will transfer to the City sufficient funds to make the annual remittance required under Chapter 3 of Part 1.9, and the City will make the annual remittances to the County Auditor-Controller in satisfaction of the requirements under Chapter 3 of Part 1.9 of the Redevelopment Law (the "Agency Transfer Payment Agreement"); and

WHEREAS, as fully set forth in the Agency Transfer Payment Agreement, the Agency Transfer Payment Agreement will be immediately binding upon the parties, but the operation of its terms will be conditioned upon the lifting of the Stay and the Court's determination that the Voluntary Program Act is constitutional; and

WHEREAS, under Title 14 of the California Code of Regulations, Section 15378(b)(4) the approval of the Agency Transfer Payment Agreement is exempt from the requirements of the California Environmental Quality Act ("CEQA"), in that it is not a project, but instead consists of the creation and continuation of a governmental funding mechanism and does not commit funds to any specific project or program; and

WHEREAS, the Agency Board has reviewed and duly considered the Staff Report, documents and other written evidence presented at the meeting.

NOW, THEREFORE, BE IT RESOLVED, that the Agency Board finds that the above Recitals are true and correct and have served, together with the supporting documents, as the basis for the findings and approvals set forth below.

BE IT FURTHER RESOLVED, that the Agency Board finds, under Title 14 of the California Code of Regulations, Section 15378(b)(4), that this resolution is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project, but instead consists of the creation and continuation of a governmental funding mechanism and does not commit funds to any specific project or program. The Agency Board therefore directs that a Notice of Exemption be filed with the County Clerk of the County of Santa Clara in accordance with the CEQA guidelines.

BE IT FURTHER RESOLVED, that the Agency Board hereby approves the Agency Transfer Payment Agreement and authorizes the Agency Executive Director or the Executive Director's designee to execute on behalf of the Agency the Agency Transfer Payment Agreement, substantially in the form on file with the City Clerk and the Agency Secretary and with such revisions thereto as may be approved by the Agency Counsel.

BE IT FURTHER RESOLVED, that the Agency Board authorizes the Agency's Executive Director or the Executive Director's designee to take such other actions and execute such other documents as are appropriate to effectuate the intent of this Resolution and to implement the Agency Transfer Payment Agreement on behalf of the Agency.

BE IT FURTHER RESOLVED, that this Resolution shall take immediate effect upon adoption.

Adopted by the Redevelopment Agency of the City of Sunnyvale at a regular meeting held on _____, 2011, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:
ATTEST:

APPROVED:

Clerk, Redevelopment Agency
(SEAL)

Chair of the Redevelopment Agency

APPROVED AS TO FORM AND LEGALITY:

By _____
David E. Kahn
Redevelopment Agency Counsel

AGENCY TRANSFER PAYMENT AGREEMENT

This Agency Transfer Payment Agreement (the "Agreement"), is entered into as of the ___ day of September, 2011, by and between Redevelopment Agency of the City of Sunnyvale, a public body, corporate and politic (the "Agency"), and the City of Sunnyvale, a municipal corporation (the "City"), with reference to the following facts, understandings and intentions of the parties:

RECITALS

A. Pursuant to the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.; the "Redevelopment Law"), the City Council (the "City Council") of the City adopted Resolution No. 2600 on November 19, 1957 declaring the need for the Agency to function in the City.

B. Also in accordance with the Redevelopment Law, the City Council adopted Ordinance No. 1796-75, on November 26, 1975, adopting the Redevelopment Plan for the Central Core Redevelopment Project Area, as amended from time to time (the "Redevelopment Plan"), and the Agency is responsible for implementing the Redevelopment Plan pursuant to the Redevelopment Law.

C. ABx1 26 (the "Dissolution Act") and ABx1 27 (the "Voluntary Program Act"; collectively, the "Redevelopment Restructuring Acts") have been enacted to significantly modify the Redevelopment Law generally as follows:

1. The Dissolution Act immediately suspended all new redevelopment activities and incurrence of indebtedness, and dissolves redevelopment agencies effective October 1, 2011; and

2. The Voluntary Program Act, through the addition of Part 1.9 to the Redevelopment Law (the "Voluntary Alternative Redevelopment Program"), allows a redevelopment agency to avoid dissolution under the Dissolution Act by opting into a voluntary alternative redevelopment program requiring specified annual contributions to local school and special districts.

D. Specifically, Section 34193(a) of the Redevelopment Law authorizes the City Council to enact an ordinance to comply with Part 1.9 of the Redevelopment Law, thereby exempting the Agency from the provisions of the Dissolution Act, and enabling the Agency to continue to exist and function under the Redevelopment Law, so long as the City and the Agency comply with the Voluntary Alternative Redevelopment Program set forth in Part 1.9 of the Redevelopment Law.

E. On August 11, 2011, the California Supreme Court (the "Court") agreed to review the California Redevelopment Association and League of California Cities' petition challenging the constitutionality of the Redevelopment Restructuring Acts and issued an order granting a partial stay on specified portions of the Redevelopment Restructuring Acts, as modified on August 17, 2011 (the "Stay"), including a stay of the provisions of the Voluntary Program Act.

F. Through the adoption and enactment of Ordinance No. 2957-11 (the "Continuation Ordinance"), the City Council, pursuant to Section 34193(a) of the Redevelopment Law, has elected to participate for itself and on behalf of the Agency in the Voluntary Alternative Redevelopment Program set forth in Part 1.9 of the Redevelopment Law, conditioned upon the lifting of the Stay and the Court's determination that the Voluntary Program Act is constitutional.

G. Pursuant to Sections 34193.2(b) and 34195(b) of the Redevelopment Law, the City Council understands that participation in the Voluntary Alternative Redevelopment Program requires remittance of certain payments as set forth in Chapter 3 of Part 1.9 of the Redevelopment Law, and also constitutes an agreement on the part of the City, in the event the City fails to make such remittance payments, to assign to the State of California its rights to any payments owed by the Agency, including, but not limited to, payments from loan agreements and this Agreement.

H. Pursuant to Section 34194.2 of the Redevelopment Law, the City and Agency have elected to enter into this Agreement, whereby the Agency agrees to transfer a portion of the Agency's tax increment to the City, in an amount equal to the annual remittance required under Chapter 3 of Part 1.9 of the Voluntary Program Act, for purposes of financing activities within the redevelopment area that are related to accomplishing the redevelopment agency project goals.

I. Pursuant to Section 34194.1 of the Redevelopment Law, the City may use any available funds not otherwise obligated for other uses to make the remittances to the County Auditor-Controller required pursuant Chapter 3 of Part 1.9 of the Voluntary Program Act.

J. The purpose of this Agreement is to provide for the transfer of tax increment and other funds from the Agency to the City in the amounts required to make each of the annual remittances mandated under Chapter 3 of Part 1.9 of the Voluntary Program Act.

K. The obligations of the Agency under this Agreement constitute an indebtedness of the Agency with respect to the redevelopment project for the Plan within the meaning of Section 16 of Article XVI of the California Constitution.

L. The City Council does not intend, by execution of this Agreement, to waive any rights of appeal regarding the amount of any remittance payments established by the California Department of Finance, as provided in the Voluntary Program Act.

M. Under Title 14 of the California Code of Regulations, Section 15378(b)(4) this Agreement is exempt from the requirements of the California Environmental Quality Act ("CEQA"), in that it is not a project, but instead consists of the creation and continuation of a governmental funding mechanism, and does not commit funds to any specific project or program.

N. Accordingly, the parties intend that, while this Agreement will be binding upon the parties as of the date set forth in the opening paragraph, the operation of the terms of this Agreement will be conditioned upon the lifting of the Stay and the Court's determination that the Voluntary Program Act is constitutional.

NOW, THEREFORE, in consideration of the recitals hereof and the mutual promises and covenants set forth in this Agreement, the Agency and the City agree as follows:

ARTICLE 1.
OBLIGATIONS OF THE PARTIES

1.1 General Purpose. To the extent required by law to maintain the existence and powers of the Agency under the Redevelopment Law, and conditioned as further provided in Section 2.9, the City and the Agency hereby enter into this Agreement whereby the Agency agrees to transfer a portion of its tax increment to the City, in an amount equal to the annual remittances required under Chapter 3 of Part 1.9 of the Redevelopment Law, for the purpose of financing activities within the redevelopment area that are related to accomplishing the Agency's project goals for the Project Area.

1.2 Transfers to City. The Agency shall transfer to the City, in a timely manner, funds from sources described in Section 1.3, in an amount equal to the annual remittances required under Chapter 3 of Part 1.9 of the Redevelopment Law, as such may be adjusted (the "Agency Transfer Payments").

1.3 Source of Agency Transfer Payments. Any combination of the following shall constitute eligible sources for the Agency Transfer Payments:

a. Any tax increment funds allocated to the Agency pursuant to Section 33670 of the Redevelopment Law net of existing debt service payments and existing third-party contractual obligations, and excluding: (1) amounts required to be allocated to the Low and Moderate Income Housing Fund, pursuant to Sections 33334.2, 33334.3, and 33334.6 of the Redevelopment Law; and (2) any funds on deposit in the Agency's Low and Moderate Income Housing Fund;

b. Any other funds previously or subsequently made available to the City by the Agency, including any unencumbered funds previously pledged to the City by the Agency under an agreement for payment of public improvements and other redevelopment activities;

c. Notwithstanding anything to the contrary, for the 2011-2012 fiscal year alone, any portion of the amount of tax increment required to be allocated to the Low and Moderate Income Housing Fund, pursuant to Sections 33334.2, 33334.3, and 33334.6 of the Redevelopment Law for the 2011-2012 fiscal year, to the extent the Agency makes the finding that there are insufficient other funds to meet its debt and other obligations, current priority program needs, or its obligations to provide the Agency Transfer Payments under this Agreement.

1.4 Payment of Remittances by City. Subject to the receipt of sufficient Agency Transfer Payments pursuant to Section 1.2 above, the City shall remit to the County Auditor-Controller the payments required pursuant to Chapter 3 of Part 1.9 of the Redevelopment Law on or before the dates prescribed in Section 34194(d)(1). The City's obligations to make the remittances required hereunder shall be a special limited obligation of the City payable solely from the Agency Transfer Payments provided to the City pursuant to the terms of this Agreement, and such remittances shall be made exclusively from the Agency Transfer Payments or from other funds that become available as a result of the City's receipt of the Agency Transfer

Payments. Nothing in this Agreement shall be deemed to be a pledge of the City's general fund revenues or other assets for the purposes of funding the remittances required by Chapter 3 of Part 1.9 of the Redevelopment Law.

1.5 Subordination. The City shall consider in good faith any request by the Agency to subordinate the City's interest herein and to allow the Agency to pledge all or any portion of the tax increment revenue on a senior pledge basis to secure payments due on future indebtedness pledged with tax increment.

ARTICLE 2. GENERAL PROVISIONS

2.1 No Third Party Beneficiaries. No person or entity other than the Agency and the City and their permitted successors and assigns, shall have any right of action under this Agreement.

2.2 State Law. This Agreement, and the rights and obligations of the parties hereto, shall be construed and enforced in accordance with the laws of the State of California.

2.3 Additional Acts. The parties each agree to take such other and additional actions and execute and deliver such other and additional documents as may be reasonably requested by the other party for purposes of implementing the actions contemplated under this Agreement.

2.4 Litigation Regarding Agreement Validity. In the event litigation is initiated attacking the validity of this Agreement, each party shall in good faith defend and seek to uphold the Agreement.

2.5 Severability. If any provisions of this Agreement, or the application thereof to any person, party, transaction, or circumstance, is held invalid, the remainder of this Agreement, or the application of such provision to other persons, parties, transactions, or circumstances, shall not be affected thereby.

2.6 Entire Agreement; Modification and Amendment. This Agreement contains all of the agreements and understandings of the parties pertaining to the subject matter contained herein and supersedes all prior or contemporaneous agreements, representations and understandings of the parties. This Agreement cannot be amended or modified except by written agreement of the parties.

2.7 Binding Upon Successors. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the parties to this Agreement, whether by agreement or operation of law, and including, without limitation, any successor to the Agency. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor, heir, administrator, executor or assign of such party who has acquired an interest in compliance with the terms of this Agreement, or under law.

2.8 Time of the Essence. Time is of the essence in the performance of all duties and obligations under this Agreement.

2.9 Binding Effect; Operation of Agreement. This Agreement shall be binding upon the parties as of the date set forth in the opening paragraph of this Agreement. The operation of the terms of this Agreement shall be conditioned upon the lifting of the Stay and the Court's determination that the Voluntary Program Act is constitutional.

[Signature Page Follows]

IN WITNESS WHEREOF, this Agreement has been executed as of the date set forth in the opening paragraph of this Agreement.

REDEVELOPMENT AGENCY OF THE CITY OF SUNNYVALE

By: _____
Gary Luebbers, Executive Director

APPROVED AS TO FORM:

David Kahn, Agency Counsel

ATTEST: _____
Kathleen Franco Simmons
Agency Secretary

CITY OF SUNNYVALE

By: _____
Gary Luebbers, City Manager

APPROVED AS TO FORM:

David Kahn, City Attorney

ATTEST: _____
Kathleen Franco Simmons
City Clerk