



Oversight Board Meeting: January 28, 2016

**SUBJECT: Adopt a Resolution of the Oversight Board of the Successor Agency for the Sunnyvale Redevelopment Agency Making Certain Findings That the 2003 Loan and Repayment Agreement between the Former Sunnyvale Redevelopment Agency and the City of Sunnyvale was for Legitimate Redevelopment Purposes and Approving Repayment of the Loan as an Enforceable Obligation.**

**BACKGROUND**

The State of California's passage of AB x1 26 dissolved Redevelopment Agencies and replaced them with Successor Agencies effective February 1, 2012. The City of Sunnyvale elected to be the Successor Agency for the Sunnyvale Redevelopment Agency. In accordance with the Dissolution Law (AB1x 26 as amended by AB 1481 and further amended by SB 107), at the time that redevelopment agencies were dissolved, most agreements between redevelopment agencies and their sponsoring communities became null and void. AB 1484, which amended the original Dissolution Law, provided that after receiving a finding of completion from the California Department of Finance, loan agreements between the former redevelopment agency and its sponsoring community would be eligible for repayment provided the Oversight Board made a finding that the loan was for legitimate redevelopment purposes. SB 107, adopted in September 2015 further amended the Dissolution Law to define city/agency loan agreements that are eligible for repayment after receipt of a finding of completion and to set the interest rate for eligible loans. SB 107 defines a loan agreement to mean:

- a. Loans for money entered into between the former redevelopment agency and the sponsoring community pursuant to which the sponsoring community transferred money to the former redevelopment agency for use by the former redevelopment agency for a lawful purpose and where the former redevelopment agency was obligated to repay the money pursuant to a required repayment schedule;
- b. Agreements between the former redevelopment agency and the sponsoring community where the sponsoring community transferred real property to the former redevelopment agency for use by the former redevelopment agency for a lawful purpose and the former redevelopment agency was obligated to pay the sponsoring community for the real property interest;
- c. Agreements between the former redevelopment agency and the sponsoring community under which the sponsoring community contracted with a third party on behalf of the former redevelopment agency for the development of infrastructure in connection with a redevelopment project identified in a redevelopment project plan and the former redevelopment agency was obligated to reimburse the sponsoring community.

SB 107 also provides that any interest on the outstanding principal amount of the loan that was unpaid is to be recalculated from the date of origination of the loan on a quarterly basis at 3% simple interest.

### **EXISTING POLICY**

California Health and Safety Code Section 34191.4, established oversight board authority to reinstate loan agreements that are eligible for repayment after receipt of a finding of completion.

### **DISCUSSION**

The Successor Agency received a finding of completion from the Department of Finance on December 23, 2015. Pursuant to Health and Safety Code Section 34191.4, the Successor Agency is now eligible to apply to the Oversight Board for approval of repayment of City/Agency loans. The Successor Agency is requesting that that Oversight Board approve repayment of a Loan and Repayment Agreement entered into by the former Redevelopment Agency of the City of Sunnyvale and the City of Sunnyvale on December 18, 2003 ("2003 Repayment Agreement"). The 2003 Repayment Agreement was entered into by the City and the Agency to provide for repayment to the City of certain advances made by the City to the former Redevelopment Agency for (i) administrative expenses associated with the former Redevelopment Agency's implementation of the Sunnyvale Redevelopment Plan and (ii) advances made by the City for certain infrastructure improvements. At the time the 2003 Repayment Agreement was entered into the City was owed \$11,905,178 for prior advances made to the former Redevelopment Agency related to administrative costs as well as an additional \$1,500,000 advanced by the City to the former Redevelopment Agency for infrastructure costs. Additional advances were added to the loan after its inception.

The loan balance represents funds that were advanced by the City to the former Redevelopment Agency for legitimate redevelopment purposes in accordance with the requirements of the Dissolution Laws. Health and Safety Code Section 33126 specifically authorized redevelopment agencies to contract with any agency to furnish staff services associated with redevelopment. The City, each year would provide the former Redevelopment Agency with a loan in the amount necessary to cover the former Redevelopment Agency's administrative expenses. The former Redevelopment Agency would then use those funds to reimburse the City for City staff costs associated with redevelopment and to pay third party consultants. The former Redevelopment Agency, prior to dissolution never made any payments on the loan.

When the former Redevelopment Agency was dissolved, the County, in accordance with the Dissolution Law, conducted an audit of the former Redevelopment Agency. The audit was prepared by Macias, Ginni and O'Connell ("MGO"). The audit was presented the Department of Finance, the State Controller, the City of Sunnyvale and this

Oversight Board in September, 2012. In that audit MGO concluded that the City was owed a total of \$20,627,170 under the 2003 Repayment Agreement. The audit breaks out the amount owed into two tranches, one of \$18,685,723 for the administrative cost portion of the loan and a second tranche of \$1,941,447 for infrastructure costs. The amount determined to be owed by MGO included interest on the principal balance calculated from the date of origination of the loan at the LAIF rates which was consistent with the Dissolution Law in effect at that time. The MGO audit includes the amounts owed on the 2003 Repayment Agreement as liabilities of the Successor agency on the basis that “upon issuance of a finding of completion by the State Department of Finance and approval from the Oversight Board, the 2003 loan may be restored...”. The County in transmitting the audit reiterated this stating that “when the Successor Agency receives a ‘finding of completion’ from the Department of Finance, these loans are eligible for restoration under certain conditions and upon Oversight Board approval.” The audit determined that the principal balance owed on the loan was \$14,017,916 related to administrative expenditures and \$1,500,000 for infrastructure costs. The Successor Agency is requesting approval of a total principal balance of \$15,517,916. Interest on the loan will be recalculated at 3% simple interest as required by the latest amendments to Dissolution Law.

Since completion of the audit, the Dissolution Law has been amended by SB 107 which provides greater clarification of what loans are eligible for repayment. One aspect of this amendment to Section 34191.4 is to require that loan eligible for repayment represent actual advances from the sponsoring community to the former redevelopment agency. The 2003 Repayment Agreement meets this criteria since the City advanced the funds to the former Redevelopment Agency each year. A portion of the 2003 Repayment Agreement would also qualify for repayment pursuant to Section 34191.4 (b)(2)(C) which allows repayments for infrastructure costs incurred by the sponsoring city on behalf of the former redevelopment agency. \$1,500,000 of the original principal balance of the 2003 Repayment Agreement relates to infrastructure costs for streets and other infrastructure in the project area.

SB 107 also requires that loans eligible for repayment post-finding of completion must obligate the former Redevelopment Agency to repay the money advanced pursuant to a required repayment schedule. The 2003 Repayment Agreement meets this requirement as well. The 2003 Repayment Agreement required the former Redevelopment Agency to repay the City from available tax increment. The former Agency’s obligation to repay the City was subordinated to the former Redevelopment Agency’s obligations to repay bonded indebtedness and other debts incurred by the former Redevelopment Agency for the benefit of the redevelopment program. The repayment provisions of the 2003 Repayment Agreement provide a typical repayment transaction where the City agreed to subordinate its repayment to third party debts in order to ensure that success of the redevelopment project. Because the amount of tax increment collected by the former Redevelopment Agency would vary each year depending upon property taxes

generated in the Project Area, the actual amount of each repayment is not specified. Rather the City's repayment is based on available tax increment and was intended to vary each year to address the fluctuations in tax increment. The intent of the loan was to ensure that repayment would not hinder the completion of the redevelopment project while at the same time ensuring that repayment would occur as rapidly as possible. Restated, section 6 of the 2003 Repayment Agreement not only sets an annual interest rate of 8%, but it includes a formulaic payment limitation for the Redevelopment Agency so that its repayment obligations were capped at the amount of tax increments funds received by the Agency. The obligation of the Agency to make annual payments, including interest, to the City is explicit and the formula for determining whether, or how much of a repayment is owed, is also explicit in the Agreement. Though, the 2003 Repayment Agreement does not set forth a fixed repayment schedule, SB107 does not require a fixed repayment schedule. Rather, it only requires that the Agreement contain a repayment schedule. As described above, the 2003 Agreement includes a repayment schedule which meets the requirements of AB107.

### **PUBLIC CONTACT**

Public contact was made by posting the Oversight Board 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. Adopt a Resolution of the Oversight Board of the Successor Agency for the Sunnyvale Redevelopment Agency Making Certain Findings That the 2003 Loan and Repayment Agreement between the Former Sunnyvale Redevelopment Agency and the City of Sunnyvale was for Legitimate Redevelopment Purposes and Approving Repayment of the Loan as an Enforceable Obligation.
2. Other action as determined by Oversight Board.

### **RECOMMENDATION**

Staff recommends Alternatives 1, Adopt a Resolution of the Oversight Board of the Successor Agency for the Sunnyvale Redevelopment Agency Making Certain Findings That the 2003 Loan and Repayment Agreement between the Former Sunnyvale Redevelopment Agency and the City of Sunnyvale was for Legitimate Redevelopment Purposes and Approving Repayment of the Loan as an Enforceable Obligation.

Submitted by:  
Brice McQueen, Successor Agency Manager

**Attachments**

1. Draft Resolution of the Oversight Board of the Successor Agency for the Sunnyvale Redevelopment Agency Making Certain Findings Regarding That Certain Loan and Repayment Agreement Between the Former Sunnyvale Redevelopment Agency and the City of Sunnyvale and Approving Repayment of the Loan as an Enforceable Obligation.

**OVERSIGHT BOARD RESOLUTION NO. \_\_\_\_-16-OB****A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY FOR THE SUNNYVALE REDEVELOPMENT AGENCY MAKING CERTAIN FINDINGS REGARDING THAT CERTAIN LOAN AND REPAYMENT AGREEMENT BETWEEN THE FORMER SUNNYVALE REDEVELOPMENT AGENCY AND THE CITY OF SUNNYVALE AND APPROVING REPAYMENT OF THE LOAN AS AN ENFORCEABLE OBLIGATION**

WHEREAS, the California state legislature enacted Assembly Bill x1 26 (the "Dissolution Act") to dissolve redevelopment agencies formed under the Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*); and

WHEREAS, pursuant to Health and Safety Code Section 34173, the City Council of the City of Sunnyvale (the "City Council") declared that the City of Sunnyvale (the "City"), would act as successor agency (the "Successor Agency") for the dissolved Redevelopment Agency of the City of Sunnyvale (the "Dissolved RDA") effective February 1, 2012; and

WHEREAS, pursuant to AB 1484 ("AB 1484"), enacted June 27, 2012 to amend various provisions of the Dissolution Act, the Successor Agency is now declared to be a separate legal entity from the City; and

WHEREAS, the Dissolution Act provides for the appointment of an oversight board (the "Oversight Board") with specific duties to approve certain Successor Agency actions pursuant to Health and Safety Code Section 34180 and to direct the Successor Agency in certain other actions pursuant to Health and Safety Code Section 34181; and

WHEREAS, on December 23, 2015, the Successor Agency was issued a Finding of Completion by the California Department of Finance pursuant to Health and Safety Code Section 34179.7; and

WHEREAS, pursuant to Health and Safety Code Section 34191.4(b)(1), upon receipt of a Finding of Completion and approval of the Oversight Board, loan agreements (as defined in Section 34191.4(b)(2)) entered into between the Dissolved RDA and the City shall be deemed to be enforceable obligations if the Oversight Board makes a finding that the loan was for legitimate redevelopment purposes; and

WHEREAS, the City of Sunnyvale ("City") and the Dissolved RDA entered into a Loan and Repayment Agreement dated December 18, 2003 ("Loan Agreement") whereby the City agreed to advance funds to the Dissolved RDA for administrative costs associated with the Dissolved RDA implementing the redevelopment program for the Sunnyvale Redevelopment Project Area and the Dissolved RDA agreed to repay the City from available tax increment; and

WHEREAS, the Loan Agreement also required the Dissolved RDA to repay the City funds advanced by the City to the Dissolved RDA for infrastructure improvements in the Project Area in the amount of \$1,500,000; and

WHEREAS, the County of Santa Clara performed an audit of the Dissolved RDA as required by the Dissolution Act and determined pursuant to that audit that at the time of dissolution the City was owed \$15,517,916 under the Loan Agreement; and

WHEREAS, the Loan Agreement qualifies for repayment pursuant to Health and Safety Code Section 34191.4(b).

NOW, THEREFORE, BE IT RESOLVED THAT THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY FOR THE FORMER REDEVELOPMENT AGENCY OF THE CITY OF SUNNYVALE HEREBY FINDS, RESOLVES, AND DETERMINES THAT:

1. The foregoing recitals are true and correct, and, together with information provided by the Successor Agency staff and the public, form the basis for the approvals, findings, resolutions, and determinations set forth below.

2. The Oversight Board hereby finds that the Loan Agreement was for legitimate redevelopment purposes.

3. The Oversight Board hereby approves inclusion of the Loan Agreement on ROPS 16-17 and authorizes repayment of the amounts owed to the City pursuant to the Loan Agreement in the principal amount of \$15,517,916 with such repayments to be made in accordance with the requirements of Health and Safety Code Section 34191.4(b)(3) and pursuant to the repayment schedule, attached hereto as Exhibit A.

4. This Resolution shall take effect at the time and in the manner prescribed in Health and Safety Code Section 34179(h).

Adopted by the Oversight Board of the Successor Agency to the Redevelopment Agency of the City of Sunnyvale at a regular meeting held on January 28, 2016, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:  
RECUSAL:

ATTEST:

APPROVED:

By \_\_\_\_\_  
Successor Agency Clerk  
[SEAL]

\_\_\_\_\_  
Chair

## EXHIBIT A

<b>Estimated Residual Redevelopment Property Tax Revenue for Repayment of 2003 Loan and Repayment Agreement Obligation by the Sunnyvale Redevelopment Successor Agency</b>								
Fiscal Year	Projected RPTTF	ROPS Distribution	County Admin	Residual Distribution	Residual Distribution Over Base Year	Maximum Fiscal Year Payment	ROPS	ROPS Payment
28/29	\$16,593,985	(\$2,575,013)	(\$268,822)	\$13,500,149	\$7,840,859	\$2,575,013	28-29A	509,023
							28-29B	509,023
29/30	\$16,925,864	(\$3,920,429)	(\$274,199)	\$12,481,236	\$5,261,778	\$3,920,429	29-30A	1,960,214
							29-30B	1,960,214
30/31	\$17,264,382	(\$2,630,889)	(\$279,682)	\$14,103,809	\$6,881,087	\$2,630,889	30-31A	1,315,444
							30-31B	1,315,444
31/32	\$17,609,669	(\$3,440,543)	(\$285,276)	\$13,633,849	\$6,407,796	\$3,440,543	31-32A	1,720,271
							31-32B	1,720,271
32/33	\$17,961,863	(\$3,203,898)	(\$290,982)	\$14,216,982	\$6,987,532	\$3,203,898	32-33A	1,601,949
							32-33B	1,601,949
33/34	\$18,321,100	(\$3,493,766)	(\$296,801)	\$14,280,532	\$7,047,617	\$3,493,766	33-34A	1,746,883
							33-34B	1,746,883
34/35	\$18,687,522	(\$3,525,080)	(\$302,737)	\$14,610,975	\$7,374,526	\$3,523,808	34-35A	1,761,904
							34-35B	1,761,904
35/36	\$19,061,273	(\$3,687,263)	(\$292,399)	\$14,831,609	\$7,575,163	\$3,687,263	35-36A	1,843,631
							35-36B	1,834,631
36/37						\$3,787,581	36-37A	1,843,631
							36-37B	1,774,073

Note - The repayment schedule is estimated based on current property tax projections over the FY 2012/13 base year (\$7,056,206) and is subject to change based on development and the economy conditions. Actual repayment will not start until full repayment of the Low and Moderate Income Housing Fund obligation has been repaid estimated to be complete in FY 2028/29.