



**Agency Meeting: April 24, 2012**

**SUBJECT: Approval For Successor Agency To Execute an Amended and Restated Reimbursement Agreement For 1998 Certificates of Participation**

**BACKGROUND**

In 1977, the City of Sunnyvale and Sunnyvale Redevelopment Agency entered into the First Amended Repayment Contract for the issuance of Lease Revenue Bonds for the acquisition and development of the Mathilda Avenue Parking Structure. The Agreement provided that the City make lease payments sufficient to cover the bond debt and that the Redevelopment Agency would reimburse the City with tax increment revenues and pay interest at the rate of 8%.

In 1998, the Redevelopment Agency refunded the Parking Lease Revenue Bonds using Certificates of Participation to take advantage of favorable interest rates and to reduce the cost to the taxpayers of paying off the bonds. The Redevelopment Agency has continued to reimburse the City for the Certificate of Participation payments pursuant to the 1977 First Amended Repayment Contract. The City and Redevelopment Agency did not execute a new reimbursement agreement in 1998.

Recent legislation dissolving redevelopment agencies, ABx1 26, invalidates agreements between cities and redevelopment agencies with certain specified exceptions, including a written agreement entered into at the time of indebtedness for purposes of repayment.

The County Controller-Auditor has audited the former Sunnyvale Redevelopment Agency's list of enforceable obligation payments and has taken the position that because the 1977 First Amended Repayment Agreement was entered into prior to the 1998 Certificates of Participation, the repayment obligation of the Redevelopment Agency to make payments to the City is not an enforceable obligation. The County recognizes, however, that the repayment obligation of the Redevelopment Agency to make payments for the 1998 COPS is legitimate and valid. Health and Safety Code Section 34178(a) permits a successor agency and city to enter into agreements with the approval of the Oversight Board for the Successor Agency. The County Controller-Auditor will amend the Sunnyvale Recognized Obligation Payment Schedule to include the

COPS payments upon the execution of a reimbursement agreement for the 1998 COPS.

The Sunnyvale Oversight Board considered and approved on April 9, 2012, the ability of the City and Sunnyvale Successor Agency to enter into a reimbursement agreement for the 1998 COPS. This reimbursement agreement will allow the City to continue to be reimbursed from property tax revenue for the Certificates of Participation (Parking Facility Refunding) Series 1998A. The appropriate procedure, as advised by the City's bond counsel, is to execute an Amended and Restated Reimbursement Agreement for the 1977 First Amended Repayment Contract.

### **DISCUSSION**

The passage of ABx1 26 dissolving redevelopment agencies and the wording of the legislation has resulted in what appears to be unintended consequences on valid and legitimate debt obligations, such as the refunding of original 1977 Lease Revenue Bonds with 1998 Certificates of Participation. Fortunately, the legislation provides for the City and Successor Agency to enter reimbursement agreements with Oversight Board Approval.

### **FISCAL IMPACT**

The Auditor-Controller has not certified the payments on the 1998 COPS as an enforceable obligation at this time. If the payments are not certified, the City will not be reimbursed for its debt service payments on the COPS and will be faced with a \$14 M General Fund payment for the 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 Web site.

### **ALTERNATIVES**

1. Approve Resolution authorizing the Sunnyvale Successor Agency to enter into an Amended and Restated Reimbursement Agreement with the City of Sunnyvale pursuant to Health and Safety Code Section 34178(a) for the reimbursement of payments, costs and interest on the Certificates of Participation (Parking Facility Refunding) Series 1998A.
2. Do not approve Resolution.

### **RECOMMENDATION**

1. Staff recommends Alternative 1: Approve Resolution authorizing the City of Sunnyvale Successor Agency to enter into an Amended and Restated

Reimbursement Agreement with the City of Sunnyvale pursuant to Health and Safety Code Section 34178(a) for the reimbursement of payments, costs and interest on the Certificates of Participation (Parking Facility Refunding) Series 1998A.

Reviewed by:

Grace Leung, Finance Director

Approved by:

David Kahn, General Counsel to Successor Agency

**Attachments**

- A. Resolution authorizing the City of Sunnyvale Successor Agency to enter into an Amended and Restated Reimbursement Agreement with the Sunnyvale Successor Agency pursuant to Health and Safety Code Section 34178(a) for the reimbursement of payments, costs and interest on the Certificates of Participation (Parking Facility Refunding) Series 1998A.

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION OF THE BOARD OF THE SUNNYVALE  
SUCCESSOR AGENCY APPROVING AN AMENDED AND  
RESTATED REIMBURSEMENT AGREEMENT FOR 1998  
CERTIFICATES OF PARTICIPATION**

WHEREAS, the City of Sunnyvale Redevelopment Agency (the “Redevelopment Agency”) issued Series A and B Parking Lease Revenue Bonds in 1977 and 1978 in the original principal amounts of \$11,200,000.00 and \$11,100,000.00 respectively (the “Bonds”); and

WHEREAS, the City of Sunnyvale (the “City”) entered into a Lease Agreement, dated as of May 1, 1977, between the City and the Redevelopment Agency (the “1977 Lease” under which the City was obligated to make Rental Payments in amounts which were equal to the debt service due on the Bonds; and

WHEREAS, at the time of the issuance of the Bonds, the Redevelopment Agency also entered into a First Amended Repayment Contract on May 1, 1977 with the City (the “Reimbursement Agreement”) to reimburse the City for all Rental Payments made by the City under the 1977 Lease; and

WHEREAS, the Bonds were refunded on May 1, 1992 in the amount of \$17,140,000.00, Parking Lease Revenue Refunding Bonds, Series 1992 and were subsequently refunded with the proceeds of Certificates of Participation (Parking Facilities Refunding) Series 1998A, issued on April 1, 1998 in the original principal amount of \$17,800,000.00 (the “1998 Certificates”) to take advantage of lower interest rate and to save the taxpayers of Sunnyvale money; and

WHEREAS, as the proceeds of the 1998 Certificates were used exclusively to refund and redeem the Bonds, the 1998 Certificates effectively replaced the Bonds; and

WHEREAS, the Redevelopment Agency has continuously made reimbursement payments to the City pursuant to the terms of the Reimbursement Agreement for rental payments made on the 1977 Lease Revenue Bonds, 1992 Lease Revenue Bonds and 1998 Certificates of Participation, and has a continuing obligation to the City to make these reimbursement payments until the debt obligations are retired; and

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

WHEREAS, on January 10, 2012 and pursuant to Health and Safety Code Section 34173, the City Council of the City ("City Council") declared that the City, would act as successor agency ("Successor Agency") for the Former Redevelopment Agency, effective February 1, 2012; and

WHEREAS, pursuant to Section 34177 of the Redevelopment Law (as added by the Dissolution Act), a successor agency can only make payments on Enforceable Obligations listed

and recognized on an "Recognized Obligation Payment Schedule" (as defined in the Dissolution Act); and

WHEREAS, the Sunnyvale Successor Agency listed the reimbursement obligations under the Reimbursement Agreement for the 1998 Certificates on its Recognized Obligation Payments Schedule as a valid and binding enforceable obligation; and

WHEREAS, the Santa Clara Auditor-Controller has declined to certify the Successor Agency's reimbursement obligation for the 1998 Certificates of Participation (because the Reimbursement Agreement was not contemporaneous with the issuance of the 1998 Certificates of Participation); and

WHEREAS, the County Auditor-Controller acknowledges that the 1997 Reimbursement Agreement would have qualified as an enforceable obligation and that the refunding of the Bonds with the proceeds of the 1998 Certificates was appropriate; and

WHEREAS, Health and Safety Code Section 34178(a) authorizes a successor agency to enter or reenter into agreements with the City that formed the redevelopment agency upon obtaining the approval of its oversight board; and

WHEREAS, on April 9, 2012, the Oversight Board for the Sunnyvale Successor Agency approved the Sunnyvale Successor Agency to enter or reenter a reimbursement agreement with the City for the 1998 Certificates; and

WHEREAS under Title 14 of the California Code of Regulations, Section 15378(b)(4), the approval of the Amended and Restated Reimbursement 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 continuation of an existing governmental funding mechanism for potential future projects and programs, and does not commit funds to any specific project or program, because it merely lists enforceable obligations previously entered into and approved by the Former RDA; and

WHEREAS, the Sunnyvale Successor Agency Board has reviewed and duly considered the Staff Report, the proposed Amended and Restated Reimbursement Agreement, and documents and other written evidence presented at the meeting.

NOW, THEREFORE, BE IT RESOLVED, that the Sunnyvale Successor 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 Sunnyvale Successor 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 CEQA in that it is not a project. The Sunnyvale Successor 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 Sunnyvale Successor Agency Board hereby approves and adopts the Amended and Restated Reimbursement Agreement to recognize that as

the proceeds of the 1998 Certificates were used to refund the Bonds, the 1998 Certificates effectively replaced the Bonds, and that the obligations of the Redevelopment Agency under the Reimbursement Agreement to reimburse the City for payments made under the 1997 Lease should be amended and restated to include payments made by the City to make payments for the 1998 Certificates.

BE IT FURTHER RESOLVED, that the Sunnyvale Successor Agency Board authorizes and directs the City Manager or the City Manager's designee to: (1) submit the Amended and Restated Reimbursement Agreement for the 1998 Certificates to the County Auditor-Controller for certification and addition to the Recognized Obligation Payment Schedule; (2) post the Reimbursement Agreement for the 1998 Certificates on the City's website as a Successor Agency action; and to take such other actions, edit documents and execute such other documents as are appropriate to effectuate the intent of this Resolution and to implement the Reimbursement Agreement for the 1998 Certificates on behalf of the Successor Agency.

BE IT FURTHER RESOLVED that this Resolution shall take effect at the time and in the manner prescribed in Health and Safety Code Section 34179(h).

Adopted by the Successor Agency Board of the Redevelopment Agency of the City of Sunnyvale, at a regular meeting held on \_\_\_\_\_, 2012, by the following vote:

- AYES:
- NOES:
- ABSTAIN:
- ABSENT:

ATTEST:

APPROVED:

By \_\_\_\_\_  
Successor Agency Board Clerk

\_\_\_\_\_  
Successor Agency Board Chair

[SEAL]

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
David Kahn, Successor Agency Board Attorney

**AMENDED AND RESTATED REIMBURSEMENT  
AGREEMENT FOR 1998 CERTIFICATES OF  
PARTICIPATION**

This Amended and Restated Reimbursement Agreement for 1998 Certificates of Participation, by and between the Successor Agency for the City of Sunnyvale Redevelopment Agency and the City of Sunnyvale, dated April 24, 2012 and effective retroactively to February 1, 2012:

**WITNESSETH**

WHEREAS, the City of Sunnyvale Redevelopment Agency (the "Redevelopment Agency") issued Series A and B Parking Lease Revenue Bonds in 1977 and 1978 in the original principal amounts of \$11,200,000.00 and \$11,100,000.00 respectively (the "Bonds"); and

WHEREAS, the City of Sunnyvale (the "City") entered into a Lease Agreement, dated as of May 1, 1977, between the City and the Redevelopment Agency (the "1977 Lease" under which the City was obligated to make Rental Payments in amounts which were equal to the debt service due on the Bonds; and

WHEREAS, at the time of the issuance of the Bonds, the Redevelopment Agency also entered into a First Amended Repayment Contract on May 1, 1977 with the City (the "Reimbursement Agreement") to reimburse the City for all Rental Payments made by the City under the 1977 Lease; and

WHEREAS, the Bonds were refunded on May 1, 1992 in the amount of \$17,140,000.00, Parking Lease Revenue Refunding Bonds, Series 1992 and were subsequently refunded with the proceeds of Certificates of Participation (Parking Facilities Refunding) Series 1998A, issued on April 1, 1998 in the original principal amount of \$17,800,000.00 (the "1998 Certificates") to take advantage of lower interest rate and to save the taxpayers of Sunnyvale money; and

WHEREAS, as the proceeds of the 1998 Certificates were used exclusively to refund and redeem the Bonds, the 1998 Certificates effectively replaced the Bonds; and

WHEREAS, the Redevelopment Agency has continuously made reimbursement payments to the City pursuant to the terms of the Reimbursement Agreement for rental payments made on the 1977 Lease Revenue Bonds, 1992 Lease Revenue Bonds and 1998 Certificates of Participation, and has a continuing obligation to the City to make these reimbursement payments until the debt obligations are retired; and

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

WHEREAS, on January 10, 2012 and pursuant to Health and Safety Code Section 34173, the City Council of the City ("City Council") declared that the City, would act as successor agency ("Successor Agency") for the Former Redevelopment Agency, effective February 1, 2012; and

WHEREAS, pursuant to Section 34177 of the Redevelopment Law (as added by the Dissolution Act), a successor agency can only make payments on Enforceable Obligations listed and recognized on an "Recognized Obligation Payment Schedule" (as defined in the Dissolution Act); and

WHEREAS, the Sunnyvale Successor Agency listed the reimbursement obligations under the Reimbursement Agreement for the 1998 Certificates on its Recognized Obligation Payments Schedule as a valid and binding enforceable obligation; and

WHEREAS, the Santa Clara Auditor-Controller has declined to certify the Successor Agency's reimbursement obligation for the 1998 Certificates of Participation (because the Reimbursement Agreement was not contemporaneous with the issuance of the 1998 Certificates of Participation); and

WHEREAS, the County Auditor-Controller acknowledges that the 1997 Reimbursement Agreement would have qualified as an enforceable obligation and that the refunding of the Bonds with the proceeds of the 1998 Certificates was appropriate; and

WHEREAS, Health and Safety Code Section 34178(a) authorizes a successor agency to enter or reenter into agreements with the City that formed the redevelopment agency upon obtaining the approval of its oversight board; and

WHEREAS, on April 9, 2012, the Oversight Board for the Sunnyvale Successor Agency approved the Sunnyvale Successor Agency to enter or reenter a reimbursement agreement with the City for the 1998 Certificates; and

WHEREAS, on April 24, 2012, the Sunnyvale City Council and Sunnyvale Successor Agency Board approved resolutions authorizing this Amended and Restated Reimbursement Agreement

NOW, THEREFORE, in consideration of the mutual covenants herein contained it is agreed by and between the parties hereto as follows:

1. The First Amended Repayment Contract dated May 1, 1977, and attached as Exhibit A, is incorporated by reference and adopted and ratified.
2. Section 1, Definitions, Bonds, is hereby amended as follows:

The term "Bonds means the not to exceed \$17,800,000.00 principal amount of the Certificates of Participation (Parking Facilities Refunding) Series 1998A authorized by, and at any time outstanding (as said term is defined in the Resolution) so long as any of such Certificates of Participation are outstanding.

3. Except as amended above, all other terms and conditions of the First Amended Repayment Contract dated May 1, 1977, shall remain in effect.

City of Sunnyvale

Successor Agency Board

By \_\_\_\_\_  
Anthony Spitaleri, Mayor

By \_\_\_\_\_  
Anthony Spitaleri, Successor Agency Board  
Chair

Approved as to Form:

Approved as to Form:

By \_\_\_\_\_  
David Kahn, Sunnyvale City Attorney

By \_\_\_\_\_  
David Kahn, Successor Agency Board Attorney

Attest:

Attest:

By \_\_\_\_\_  
Kathleen Franco Simmons, City Clerk

By \_\_\_\_\_  
Kathleen Franco Simmons, Successor Agency  
Board Clerk