



## City Council Staff Report

DATE: December 17, 2014 CONSENT CALENDAR

SUBJECT: APPROVE SUBSTITUTION OF REMARKETING AGENT FOR THE CERTIFICATES OF PARTICIPATION TO FINANCE THE DOWNTOWN PARKING STRUCTURE

FROM: David H. Ready, City Manager

BY: Suzanne Harrell, City Financial Advisor

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### SUMMARY

In 2002, the City issued Taxable Variable Rate Demand Certificates of Participation (COPs) to finance the parking structure at the corner of Baristo Road and Indian Canyon Drive. The COPs bear interest at a short term variable rate, reset every 7 days.

Owners of such short term variable rate debt can require the City to repurchase their COPs on 7 days' notice. The funds for such a purchase are provided under a letter of credit, and the City's remarketing agent then finds a new buyer to purchase the COPs and repays any draw on the letter of credit.

The City has had the same remarketing agent since the COPs were issued. Staff is recommending a change in remarketing agent at this time in order to secure lower fees.

### RECOMMENDATION:

1. Approve a Remarketing Agreement with Mitsubishi UFJ Securities (USA), Inc., for the Certificates of Participation issued for the Downtown Parking Structure.
2. Terminate the current Remarketing Agreement with Stifel, Nicolaus & Company, Incorporated.
3. Authorize the City Manager to execute all necessary documents.

STAFF ANALYSIS:

The COPs were issued to finance the original downtown parking structure located at the corner of Baristo Road and Indian Canyon Drive. Because the City intended for much of the parking to be reserved for restaurants and possibly tenant employee parking, the COPs could not be issued as tax-exempt bonds.

Taxable municipal bond interest rates were extremely high in 2002 when the COPs were issued, and it was determined that the most prudent way to finance the facility was to issue taxable variable rate debt. The interest rate is reset every 7 days, keeping the rate as low as possible.

Because the interest rate is reset every 7 days, investors are provided an opportunity to sell their COPs back to the City every week. In order to maintain sufficient liquidity to purchase any COPs on short notice, the City secured a letter of credit with Union Bank when the COPs were issued. If there was ever a draw on the letter of credit to fund the purchase of COPs, the City engaged Stifel, Nicolaus & Company, Incorporated (successor-in-interest to Stone & Youngberg LLC) as the remarketing agent to find new buyers for the COPs. The funds from the sale to a new buyer are used to repay the letter of credit.

Union Bank and Mitsubishi UFJ Securities (USA), Inc. are owned by Mitsubishi UFJ Financial Group. Union Bank approached the City with a request to have Mitsubishi UFJ provide remarketing agent services at a lower fee than is currently charged by the existing remarketing agent. The new remarketing agent also has a track record of obtaining the lowest possible interest rates on those bonds that are secured by Union Bank's letter of credit, since they are part of the same company.

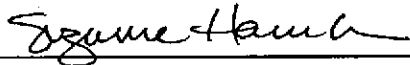
Staff and the City's Financial Advisor believe that substituting Mitsubishi UFJ for the current remarketing agent will also result in the ability to obtain an extension of the letter of credit from Union Bank (now called MUFG Union Bank) due to the enhanced relationship with the bank created by entering into the remarketing agreement with Mitsubishi UFJ. The current MUFG Union Bank letter of credit expires on July 31, 2015.

In order to substitute Mitsubishi UFJ Securities (USA), Inc. as the remarketing agent, the City will enter into the attached Remarketing Agreement, and staff requests the City Council to authorize the City Manager to execute the agreement. The City's financial advisor and bond counsel have each reviewed the form of the agreement.

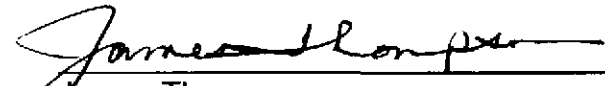
FISCAL IMPACT:


The current remarketing agent fee is 12.5 basis points multiplied by the outstanding par amount of the COPs. The remarketing fee proposed by Mitsubishi UFJ Securities (USA), Inc. is 8 basis points. The fee differential over the remaining 13 years that the COPs are outstanding is \$23,200, a 36% reduction in the fees payable by the General Fund.

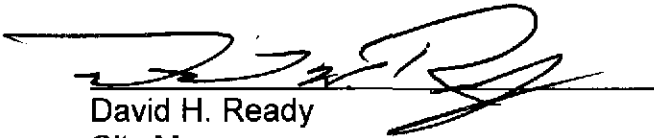
Because of the current low interest rate environment, staff continues to explore methods to fix the interest rate on the COPs without increasing the financing cost to the General Fund.

  
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Suzanne Harrell  
City Financial Advisor

  
\_\_\_\_\_  
Geoffrey Kiehl  
Director of Finance

  
\_\_\_\_\_  
James Thompson  
Chief of Staff / City Clerk

  
\_\_\_\_\_  
Douglas C. Holland  
City Attorney

  
\_\_\_\_\_  
David H. Ready  
City Manager

Attachments:  
    Remarketing Agreement

**\$8,000,000 (Original Amount)**  
**City of Palm Springs, California**  
**Taxable Variable Rate Demand Certificates of Participation, 2002 Series A**  
**(Downtown Parking Project)**

**REMARKETING AGREEMENT**

**THIS REMARKETING AGREEMENT** (this "Agreement"), dated as of January 7, 2015, is made by and between the **City of Palm Springs** (the "City") and **MITSUBISHI UFJ SECURITIES (USA), INC.**, as Remarketing Agent (the "Agent"), in connection with the offering and sale from time to time in the above-captioned certificate of participations (the "Certificates"). The Certificates were issued under and pursuant to a Trust Agreement dated as of August 1, 2002 (the "Trust Agreement"), between the City and The Bank of New York Mellon Trust Company, N.A., successor to BNY Western Trust Company, as trustee (the "Trustee"). The City is party to a Reimbursement Agreement, dated as of the date of the Trust Agreement (the "Reimbursement Agreement"), with Union Bank, N.A. (the "Bank"), pursuant to which the Bank has issued an irrevocable letter of credit (the "Letter of Credit") in favor of the Trustee. Additionally the City is party to a Confirmation Agreement (the "Confirmation Agreement"), with the California State Teachers' Retirement System (the "Confirming Bank"), pursuant to which the Confirming Bank has issued a Confirming Letter of Credit (the "Confirming Letter of Credit") in favor of the trustee.

This Agreement is effective as of the date hereof, it being acknowledged that the City has terminated its remarketing agreement with Stifel Nicolaus & Company, as successor in interest to Stone and Youngberg LLC dated as of August 1, 2002 with respect to the Certificates, which termination is effective as of the date hereof.

**Section 1. Definitions.** Unless a different meaning clearly appears from the context, all words and terms used in this Agreement shall have the respective meanings assigned to such terms in the Trust Agreement.

**Section 2. Acceptance of Appointment; Representations and Warranties of the Agent.** The City hereby appoints the Agent as exclusive Remarketing Agent for the Certificates, and the Agent hereby accepts such appointment and agrees to perform the duties and covenants of the Agent set forth herein and in the Trust Agreement.

**Section 3. Representations and Warranties of the City.** The City represents and warrants to the Agent that:

(a) This Agreement (assuming due authorization, execution and delivery by the Agent) constitutes the valid and binding obligation of the City, enforceable against the City in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium, liquidation, reorganization and other similar laws affecting creditors' rights generally and to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(b) The City has all requisite power and City to perform its obligations under the Trust Agreement, and has all requisite power and City to execute, deliver and perform its obligations under this Agreement.

**Section 4. Certain Agreements of the City.** The City agrees with the Agent that:

(a) The City agrees to furnish to the Agent sufficient copies of a reoffering statement (the "Reoffering Statement"), in preliminary (if applicable) and final form, in form and substance satisfactory to the Agent, and any other related material prepared for use by the City, as the Agent reasonably determines may be necessary in connection with any remarketing of the Certificates that constitutes a "primary offering" within the meaning of Rule 15c2-12 (the "Rule") promulgated, and as

amended from time to time, by the Securities and Exchange Commission (the "SEC") under the Securities Exchange Act of 1934, as amended (the "Exchange Act"); provided, however, that nothing in this Section 4 shall require the Agent to offer for sale any Certificates if such offer is subject to the Rule unless (i) the Agent, in its sole discretion, decides to undertake such obligation and (ii) the Agent, in its sole discretion, determines that the requirements of the Rule have been satisfied. Further, the City agrees to cooperate in the preparation of and to make available to the Agent revised Reoffering Statements or amendments or supplements thereto such as may be required so that the Reoffering Statement required for use in any such "primary offering" will not contain any misstatement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. Any costs or expenses incurred in connection with the preparation of a Reoffering Statement and any amendments or supplements thereto shall be the responsibility of the City. The Agent acknowledges that the remarketing of Certificates, while such Certificates bear interest at a Weekly Interest Rate and such Certificates are remarketed in denominations of \$100,000 or more, is not considered a "primary offering" within the meaning of the Rule as interpreted by the SEC as of the date of execution of this Agreement.

(b) If, during such time as the Reoffering Statement is used in connection with such "primary offering" and sale of the Certificates, any event occurs or condition exists relating to or affecting the City or the Certificates as a result of which the Reoffering Statement would contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, the City upon learning of such event or condition shall promptly notify the Agent in writing of the circumstances and details of such event. The City will cooperate with the Agent in the preparation of the additional marketing materials which the Agent reasonably determines are necessary in connection with such "primary offering" and sale of the Certificates or which the Agent reasonably determines should be provided to owners and prospective owners of the Certificates.

(c) The City will furnish the Agent copies of all reports and financial statements relating to the financial affairs and condition of the City as required by the Trust Agreement promptly after they are made available to the public by the City by posting on EMMA (Electronic Municipal Market Access) and such additional information concerning the operations and financial condition of the City as required by the Trust Agreement or concerning the Certificates as the Agent may from time to time reasonably request;

(d) At the expense of the Agent, the City will furnish such information, execute such instruments and take such other action not inconsistent with law in cooperation with the Agent as the Agent may request (i) to qualify the Certificates for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States as the Agent may designate and (ii) to determine the eligibility of the Certificates for investment under the laws of such states and other jurisdictions, and will use commercially reasonable efforts to continue such qualifications in effect until the termination of this Agreement; provided, however, that the City shall not be required to execute a general or special consent to service of process or qualify to do business in connection with any such qualification or determination in any jurisdiction.

(e) If a Reoffering Statement is not supplied as required by the provisions of Section 4(a) above, the Agent's obligation to remarket the Certificates pursuant to the Trust Agreement and under this Agreement will be suspended until such time as a Reoffering Statement satisfactory to the Agent and its counsel is supplied.

(f) The City represents and warrants to the Agent that the City will furnish such information, execute such documents and take such other action in cooperation with the Agent as the Agent may reasonably request in order to remarket the Certificates; provided that the City shall not be required to take any action which would submit it to, or constitute consent to, service of process or to qualify as a foreign corporation in any jurisdiction where it is not otherwise presently subject to service or so qualified, as the case may be.

To assist the Agent in complying with its obligations under MSRB Rule G-34(c), the City shall provide the Agent with a copy of the Letter of Credit, Confirming Letter of Credit, Reimbursement Agreement, Confirmation Agreement, the Trust Agreement or any other document to which the City is a party that establishes an obligation to provide credit and/or liquidity support with respect to the Certificates, including any amendments thereto, in the following manner:

(i) on the effective date of this Agreement, a copy of the Letter of Credit and Confirming Letter of Credit;

(ii) within ten Business Days prior to the proposed date of any amendment, extension, renewal, replacement or termination, as the case may be, of the Letter of Credit and Confirming Letter of Credit or any other document to which the City is a party that establishes an obligation to provide credit and/or liquidity support with respect to the Certificates, written notice that such document is proposed to be amended, extended, renewed, replaced or terminated, as the case may be, and the expected date of execution and delivery of such amendment, extension, renewal, replacement or termination, as the case may be;

(iii) within five Business Days after the execution and delivery of any amendment, extension, renewal, replacement or termination, as the case may be, of the Letter of Credit and Confirming Letter of Credit or any other document to which the City is a party that establishes an obligation to provide credit and/or liquidity support with respect to the Certificates, a copy thereof; and

(iv) no later than three Business Days after receiving a request from the Agent for any document requested pursuant to this section, a copy thereof.

In each instance that a document is delivered to the Agent pursuant to this Section 4(f), the City shall provide: (A) a final execution copy of each relevant document; and (B) in any such document where any redactions are made, (x) a redacted final execution copy of such document, and (y) a file containing a list describing the nature of all redactions that have been made to such document.

If there are any additional regulatory requirements, amendments or modifications to the securities laws with which the Agent must comply, the City shall take all steps reasonably requested by the Agent or its counsel necessary to comply with such additional requirements. In the event the City does not provide the Agent with a copy of a document described in this Section 4(f), the City acknowledges that the Agent may file a notice with the MSRB's Short-Term Obligation Rate Transparency System ("SHORT System") that such document will not be provided at such time as is specified by the MSRB and in the SHORT System users' manual

**Section 5. Remarketing.** (a) The City has appointed the Agent as the exclusive agent for the remarketing of the Certificates pursuant to this Agreement and, in reliance on the representations contained herein and subject to the terms hereof, the Agent accepts the duties and obligations of the Remarketing Agent herein and under the Trust Agreement and agrees to use its best efforts to solicit offers to purchase, at a price of 100% of the principal evidenced thereby plus accrued interest evidenced thereby, if any, the Certificates which have been tendered or deemed tendered by the holders thereof pursuant to the Trust Agreement and to perform the other obligations of the Remarketing Agent as set forth herein and in the Trust Agreement; *provided, however*, that at no time shall the Certificates, while bearing interest at a Weekly Rate, be remarketed, or delivered by the Agent, in any denomination other than in the amount of \$100,000 or any integral multiple of \$5,000 in excess thereof. The Agent further agrees to keep such books and records as shall be consistent with prudent industry practice and to make such books and records available for inspection by the City at all times.

(b) In the event of (i) a suspension or material limitation in trading in securities generally on the New York Stock Exchange, (ii) a general moratorium on commercial banking activities in New York declared by either federal or New York State authorities or (iii) the engagement by

the United States in hostilities or escalation of existing hostilities or a declaration of a national emergency or war, if the effect of any of which in the Agent's judgment makes it impracticable or inadvisable to proceed with solicitation of offers to purchase the Certificates, and so long as such situation continues to exist (it being acknowledged by the parties hereto that as of the date hereof no such event is occurring), the Agent shall have the right to terminate its obligations under this Agreement at any time by notifying the City in writing or by facsimile transmission, telex or other electronic communication.

(c) In consideration of the Agent's services hereunder, during periods when Certificates are in the Weekly Rate Mode, the City agrees to pay an annual fee of eight basis points (0.08%) based upon the outstanding principal amount evidenced by the Certificates bearing interest at a Weekly Interest Rate on the first day of each calendar quarter, payable quarterly in arrears commencing on the first day of the next following calendar quarter. Payment for any partial calendar quarter shall be made on a pro rata basis. The Agent's fees for services hereunder for Certificates in the Extended Rate Mode or the Long Term Rate Mode shall be as may be agreed upon by the Agent and the City. Any fee due but unpaid upon the termination of this Agreement shall be payable by the City upon termination. If this Agreement terminates as provided in Section 9 hereof, the City shall pay to the Agent any portion of the annual fee due and owing the Agent

(d) The Agent shall suspend remarketing of any Certificates upon receipt of written notice from the Bank of an Event of Default under Section 6.01 of the Reimbursement Agreement until such time as the Bank notifies the Agent that such Event of Default has been cured or waived.

**Section 6. The Agent.** (a) The Agent will be acting solely as the remarketing agent in the re-sale of the Certificates, and the Agent's responsibility is limited to the use of its best efforts to solicit offers to purchase the Certificates.

(b) The commitment to remarket the Certificates shall not be construed to obligate the Agent to use any of its own funds or otherwise incur financial liability in acting as Agent hereunder.

(c) The Agent, in its individual capacity, either as principal or agent, may buy, sell, own, hold and deal in any of the Certificates, and may join in any action which any holder of Certificates may be entitled to take, with like effect as if it did not act in any capacity hereunder. The Agent, in its individual capacity, either as principal or agent, may also engage in or be interested in any financial or other transaction with the City and may act as depository, trustee or agent for any committee or body of holders of Certificates or other obligations of the City as freely as if it did not act in any capacity hereunder. The City also acknowledges that the Agent is a full service firm that, together with its affiliates, is engaged in securities trading and brokerage activities and provides investment banking, financing and financial advisory services. In the ordinary course of its trading, brokerage and financing activities, the Agent (and/or its affiliates) may at any time hold long or short positions, and may trade or otherwise effect transactions, for their own accounts or the accounts of customers, in debt or equity securities or financial instruments (including bank loans and other obligations) of the City.

(d) The City acknowledges and agrees that (i) the Agent is acting solely as a principal and not the agent or fiduciary of the City, and in particular that the Agent is not acting as a "municipal advisor" (as defined in Section 15B of the Exchange Act) and the Agent has financial and other interests that differ from those of the City, (ii) the Agent has not assumed an advisory or fiduciary responsibility in favor of the City with respect to the remarketing contemplated hereby or the process leading thereto (irrespective of whether the Agent has advised or is currently advising the City on other matters) or any other obligation to the City except the obligations expressly set forth in this Agreement and (iii) the City has consulted its own legal and financial advisors to the extent it deemed appropriate. The City agrees that it will not claim that the Agent is a "municipal advisor" within the meaning of Section 15B of the Exchange Act, or owes a fiduciary or similar duty to the City in connection with such transaction or the process leading thereto.

**Section 7. Intention of Parties.** It is the expressed intention of the parties hereto that no purchase, sale or transfer of any Certificates, as herein provided, or the setting of interest rates in respect thereof, shall constitute or be construed to be the extinguishment of the indebtedness evidenced thereby or the reissuance or the refunding of any indebtedness evidenced thereby.

**Section 8. Amendments.** This Agreement may not be amended except by a writing signed by each of the parties hereto.

**Section 9. Term.** Unless previously terminated, this Agreement shall remain in full force and effect until payment in full, or the provision for payment in full, of the Certificates, or on the day after all Certificates are converted to bear interest at a Fixed Rate. The City shall have the right to terminate this Agreement at any time upon the giving of 30 days' prior written notice to the Agent and the Agent shall have the right to terminate this Agreement at any time upon the giving of not less than 30 days' prior written notice to the City, the Bank and the Trustee, provided that no such termination will be effective until a successor is appointed and has accepted the responsibilities as Remarketing Agent in accordance with the Trust Agreement. The City shall promptly pay to the Agent the compensation, in accordance with Section 5(c) hereof, accrued through the effective date of such termination.

**Section 10. Notices.** Unless otherwise provided herein, all notices, Certificates, requests or other communications hereunder shall be deemed given when delivered in writing by hand or sent by facsimile transmission, telex or registered mail, postage prepaid, addressed as follows:

If to the City:

City of Palm Springs  
3200 East Tahquitz Canyon Way  
P.O. Box 2743  
Palm Springs, CA 92263-2743  
Attention: James Thompson, City Clerk  
Tel: 760-323-8204  
Fax: 762-322-8332  
E-mail: Jay.Thompson@palmspringsca.gov

If to the Agent:

Mitsubishi UFJ Securities (USA), Inc.  
400 California Street, 11<sup>th</sup> Floor  
San Francisco, CA 94104  
Attn: David Kelp  
Tel: 415-489-3975  
Fax: 646-434-3476  
E-mail: [dkelp@us.sc.mufg.jp](mailto:dkelp@us.sc.mufg.jp)  
(with copy to [TransactionManagement@us.sc.mufg.jp](mailto:TransactionManagement@us.sc.mufg.jp))

If to the Bank (so long as the VRDB Credit Enhancement Instrument is outstanding):

Union Bank, National Association  
445 South Figueroa Street  
Los Angeles, CA 90071  
Attn: Anne Kupfer  
Tel: 213-236-6434  
Fax: 213-236-6917  
E-mail: [anne.kupfer@unionbank.com](mailto:anne.kupfer@unionbank.com)



If to the Trustee:

The Bank of New York Mellon Trust Company, N.A.  
400 South Hope Street, Suite 400  
Los Angeles, CA 90071  
Attn: Eladia Burgos  
Tel: 213-630-6231  
E-mail: eladia.burgos@bnymellon.com

Each of the above parties may, by written notice given hereunder to the others, designate any further or different addresses to which, or means by which, subsequent notices, Certificates, requests or other communications shall be sent.

**Section 11. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

**Section 12. Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

**Section 13. Captions.** The captions or headings in this Agreement are for convenience of reference only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

**Section 14. Assignment.** The obligations of the respective parties hereto may not be assigned or delegated to any other person without the consent of the other party hereto and of the Bank, which shall not be unreasonably withheld. This Agreement will inure to the benefit of and be binding upon the City and the Agent and their respective successors and assigns, and will not confer any rights upon any other person, partnership, associations or corporation other than persons, if any, controlling the Agent within the meaning of the Securities Act; provided the Bank shall be a third party beneficiary of this Agreement. The terms "successors" and "assigns" shall not include any purchaser of any of the Certificates merely because of such purchase.

**Section 15. Mitsubishi UFJ Securities (USA), Inc. to be Sole Agent.** The City agrees that unless and until this Agreement has been terminated as provided herein, no additional remarketing agent will be appointed unless the Agent consents in writing to such appointment.

**Section 16. Severability.** If any provisions of this Agreement shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions, because it conflicts with any provisions of any constitution, statute, rule of public policy, or any other reason, such circumstances shall not have the effect of rendering the provision in question invalid, inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions of this Agreement invalid, inoperative or unenforceable to any extent whatever.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**CITY OF PALM SPRINGS, CALIFORNIA**

By: \_\_\_\_\_  
**David H. Ready, City Manager**

**MITSUBISHI UFJ SECURITIES (USA), INC.**

By: \_\_\_\_\_  
**Authorized Officer**

Approved as to Form:

\_\_\_\_\_  
**City Attorney**