



May 5, 2013

Mr. Brice McQueen, Successor Agency Manager
City of Sunnyvale
650 W. Olive Ave.
Sunnyvale, CA 94088

Dear Mr. McQueen:

Subject: Other Funds and Accounts Due Diligence Review

This letter supersedes the California Department of Finance's (Finance) original Other Funds and Accounts (OFA) Due Diligence Review (DDR) determination letter dated April 1, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Sunnyvale Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on January 14, 2013. The purpose of the review was to determine the amount of cash and cash equivalents available for distribution to the affected taxing entities. Finance issued an OFA DDR determination letter on April 1, 2013. Subsequently, the Agency requested a Meet and Confer session on one or more items adjusted by Finance. The Meet and Confer session was held on April 25, 2013.

Based on a review of additional information and documentation provided to Finance during the Meet and Confer process, Finance has completed its review of those specific items being disputed. Specifically, the following adjustments were made:

- Cash assets transferred to the City of Sunnyvale (City) totaling \$13,819,358 is not allowed. Our review indicated that there were two transfers in the amount of \$8,830,951 on June 30, 2011 and \$4,988,407 on January 31, 2012, totaling \$13,819,358. These transfers were in accordance with a 1977 City General Fund loan. During the Meet and Confer process, the Agency stated that the item had been listed on the January through June 2012 Recognized Obligation Payment Schedule (ROPS I) form and was not denied by Finance. This was Item 5 on the ROPS I form in the amount of \$3,884,706. In Finance's letters dated May 11, 2012 and May 24, 2012, this item was not listed as denied. Therefore, the Agency was able to spend up to the \$3,884,706 amount listed during the ROPS I period.

As related to the remaining amount, per HSC section 34179.5 (c) (2), the dollar value of assets and cash transferred by the former redevelopment agency or successor agency to the city, county, or city and county that formed the former RDA between January 1, 2011 through June 30, 2012 must be evidenced by documentation of the enforceable obligation that required the transfer. HSC section 34179.5 states "enforceable obligation" includes any of the items listed in subdivision (d) of section 34171, contracts detailing specific work that were entered into by the former redevelopment agency prior

to June 28, 2011 with a third party other than the city, county, or city and county that created the former RDA. HSC section 34171 (d) (2) states "enforceable obligation" does not include any agreements, contracts, or arrangements between the city that created the RDA and the former RDA. Therefore, the transfer was not made pursuant to an enforceable obligation and is not permitted. Accordingly, the OFA balance available for distribution to the taxing entities will be increased by \$9,934,652 (\$13,819,358 - \$3,884,706).

The repayment of these loans may become enforceable obligations after the Agency receives a Finding of Completion from Finance. If the oversight board makes a finding that the loans were for legitimate redevelopment purposes, these loans should be placed on future Recognized Obligation Payment Schedules (ROPS) for repayment. Refer to HSC section 34191.4 (b) for more guidance.

The Agency did not object to the following information during the Meet and Confer process:

- Assets legally restricted in the amount of \$63,388 for unclaimed property. The Agency states these funds need to be retained until August 2013. Finance agrees with this assessment and believes these funds should remain restricted until August 2013 pursuant to Government Code section 50050. When the funding becomes available in August 2013, the Agency should either disburse this amount to the taxing entities or offset the request for Redevelopment Property Tax Trust Funds on the Recognized Obligation Payment Schedule.

The Agency's OFA balance available for distribution to the affected taxing entities is \$9,934,652 (see table below).

OFA Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ -
Finance Adjustments	
Add:	
Transfers to Sunnyvale General Fund:	\$ 9,934,652
Total OFA available to be distributed:	\$ 9,934,652

This is Finance's final determination of the OFA balances available for distribution to the taxing entities. HSC section 34179.6 (f) requires successor agencies to transmit to the county auditor-controller the amount of funds identified in the above table within five working days, plus any interest those sums accumulated while in the possession of the recipient. Upon submission of payment, it is requested you provide proof of payment to Finance within five business days.

If for some reason the successor agency cannot immediately remit the entire sum, HSC section 34179.6 (h) (3) authorizes Finance to review requests for an installment payment plan. If you wish to make installment payments, please notify your Agency's assigned Finance review staff immediately. Upon receipt of your request, Finance will work with your Agency to determine whether installment payments are appropriate.

If funds identified for transmission are in the possession of the successor agency, and if the successor agency is operated by the city or county that created the former redevelopment agency, then failure to transmit the identified funds may result in offsets to the city's or the county's sales and use tax allocation, as well as its property tax allocation. If funds identified for

transmission are in the possession of another taxing entity, the successor agency is required to take diligent efforts to recover such funds. A failure to recover and remit those funds may result in offsets to the other taxing entity's sales and use tax allocation or to its property tax allocation. If funds identified for transmission are in the possession of a private entity, HSC 34179.6 (h) (1) (B) states that any remittance related to unallowable transfers to a private party may also be subject to a 10 percent penalty if not remitted within 60 days.

Failure to transmit the identified funds will also prevent the Agency from being able to receive a finding of completion from Finance. Without a finding of completion, the Agency will be unable to take advantage of the provisions detailed in HSC section 34191.4. Specifically, these provisions allow certain loan agreements between the former redevelopment agency (RDA) and the city, county, or city and county that created the RDA to be considered enforceable obligations. These provisions also allow certain bond proceeds to be used for the purposes in which they were sold and allows for the transfer of real property and interests into the Community Redevelopment Property Trust Fund once Finance approves the Agency's long-range property management plan.

In addition to the consequences above, willful failure to return assets that were deemed an unallowable transfer or failure to remit the funds identified above could expose certain individuals to criminal penalties under existing law.

Pursuant to HSC sections 34167.5 and 34178.8, the California State Controller's Office (Controller) has the authority to claw back assets that were inappropriately transferred to the city, county, or any other public agency. Determinations outlined in this letter do not in any way eliminate the Controller's authority.

Please direct inquiries to Evelyn Suess, Supervisor, or Mary Halterman, Analyst, at (916) 445-1546.

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Ms. Grace K. Leung, Director of Finance, City of Sunnyvale
Ms. Irene Lui, Controller Treasurer, County of Santa Clara
California State Controller's Office