



November 8, 2013

Mr. Brice McQueen, Successor Agency Manager
City of Sunnyvale
650 West Olive Avenue
Sunnyvale, CA 94088

Dear Mr. McQueen:

Subject: Recognized Obligation Payment Schedule

Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of Sunnyvale Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule (ROPS 13-14B) to the California Department of Finance (Finance) on September 27, 2013 for the period of January through June 2014. Finance has completed its review of your ROPS 13-14B, which may have included obtaining clarification for various items.

HSC section 34171 (d) defines enforceable obligations. Based on a sample of line items reviewed and application of the law, the following do not qualify as enforceable obligations for the reasons specified:

- Item No. 2 – 1998 Certificates of Participation (Parking Facility Funding) in the total amount of \$11,229,750 from other funds. Finance continues to deny this item. Finance previously denied the item as the payment is pledged and secured by rental payments required by the City of Sunnyvale (City), and not Agency funds.

The Agency contends the item is an enforceable obligation and eligible for payment from RPTTF because the 1977 First Amended Repayment Contract is a valid enforceable obligation pursuant to HSC Sections 34171 (d) (2) and 34178 (b) (1), and because it is a duly authorized written agreement that was entered into at the time of issuance, but in no event later than December 31, 2010, of indebtedness obligations, and solely for the purpose of securing or repaying those indebtedness obligations.

However, in the Trust Agreement and the Facility Lease dated March 1, 1998, the City pledged funds for the rental payments. The Amended and Restated Reimbursement Agreement for 1998 Certificates of Participation was entered into on April 24, 2012, between the City and the Agency. That agreement is not valid as HSC section 34177.3 (a) prohibits successor agencies from creating new enforceable obligations and the Reimbursement Agreement is a new enforceable obligation. Therefore, the amended and restated agreement is not an enforceable obligation, and not eligible for Agency funds.

- Item No. 4 – 1977 Loan Repayment Agreement in the total amount of \$28,210,296. Finance continues to deny this item at this time. Finance previously denied the item as HSC section 34171 (d) (2) states that agreements, contracts, or arrangements between the city that created the redevelopment agency (RDA) and the former RDA are not enforceable. This agreement was not made within the first two years of the creation of the RDA.

The Agency contends this item is an enforceable obligation because the Repayment Contract is an authorized written agreement entered into at the time of issuance, but in no event later than December 31, 2010, of indebtedness obligations, and solely for the purpose of securing or repaying those indebtedness obligations as set forth in HSC Sections 34171 (d) (2) and 34178 (b) (1).

However, the City loaned funds to the former RDA to enable the former RDA to make the debt service payments on their indebtedness obligations. The City was providing the security or repayment of the indebtedness obligations, not the former RDA. Additionally, the 1977 Lease Revenue Bonds have since been refunded and no further payments are necessary. Additionally, Finance has not issued a Finding of Completion to the Agency; therefore, the provisions of HSC section 34171 apply. HSC section 34171 (d) (2) states that agreements, contracts, or arrangements between the city, county, or city and county that created the RDA and the former RDA are not enforceable obligations. Therefore, this item is currently not an enforceable obligation.

- Item No. 10 – Amended and Restated Reimbursement Agreement for the 1998 Certificates of Participation in the total amount of \$11,229,750. The Agency is requesting RPTTF totaling \$223,925 for this ROPS. This Agreement is between the Agency and the City for the purpose of reimbursing payments to the 1998 Certificates of Participation. This item is denied as HSC section 34171 (d) (2) states that agreements, contracts, or arrangements between the city that created the redevelopment agency (RDA) and the former RDA are not enforceable obligations. In addition, this agreement is not valid as HSC section 34177.3 (a) prohibits successor agencies from creating new enforceable obligations and the Reimbursement Agreement is a new enforceable obligation. Therefore, the amended and restated agreement is not an enforceable obligation, and not eligible for RPTTF funding.
- Item No. 11 – Legal Fees in the amount of \$121,875. The legal fees are associated with litigation between the City of Sunnyvale, the Agency, Finance, and the Santa Clara County Auditor-Controller (CAC) in regards to adjustments made to the Other Funds and Accounts Due Diligence Review (OFA DDR). Pursuant to HSC section 34179.6 (d), Finance is authorized to make adjustments to the OFA DDR. HSC section 34179.6 (f) requires the Agency to recover any money which is transferred without an underlying enforceable obligation. Through multiple reviews it appears there is no underlying enforceable obligation for the transfers questioned by Finance in the OFA DDR, therefore litigation costs in regards to this issue are not eligible to be funded with RPTTF.

In addition, pursuant to HSC section 34177 (f), the Agency is required to enforce the former redevelopment agencies (RDA) rights for the benefit to the taxing entities. This would include protecting the assets of the former RDA. In a lawsuit such as this, the Agency's argument directly contradicts the City's argument as the Agency is required to adhere to AB x1 26 and AB 1484. The eventual outcome of the litigation could

potentially benefit the City, while negatively impacting the taxing entities. Therefore, pursuant to HSC section 34171 (d) (1) (F), these legal fees do not qualify as an enforceable obligation of the Agency as they are not related to protecting the assets or obligations of the Agency.

Pursuant to HSC Section 34186 (a), successor agencies were required to report on the ROPS 13-14B form the estimated obligations and actual payments (prior period adjustments) associated with the January through June 2013 period. HSC Section 34186 (a) also specifies that the prior period adjustments self-reported by successor agencies are subject to audit by the CAC and the State Controller. The amount of RPTTF approved in the table below includes the prior period adjustment resulting from the CAC's audit of the Agency's self-reported prior period adjustment.

Except for items denied in whole or in part as enforceable obligations or for items that have been reclassified, Finance is not objecting to the remaining items listed on your ROPS 13-14B. If you disagree with the determination with respect to any items on your ROPS 13-14B, you may request a Meet and Confer within five business days of the date of this letter. The Meet and Confer process and guidelines are available at Finance's website below:

http://www.dof.ca.gov/redevelopment/meet_and_confer/

The Agency's maximum approved RPTTF distribution for the reporting period is \$671,444 as summarized below:

Approved RPTTF Distribution Amount For the period of January through June 2014	
Total RPTTF requested for non-administrative obligations	810,156
Total RPTTF requested for administrative obligations	125,000
Total RPTTF requested for obligations	\$ 935,156
Total RPTTF requested for non-administrative obligations	810,156
Denied Items	
Item No. 10	(223,925)
Item No. 11	(121,875)
Total RPTTF approved for non-administrative obligations	586,231
Total RPTTF requested for administrative obligations	125,000
Total RPTTF approved for administrative obligations	125,000
Total RPTTF approved for obligations	711,231
ROPS III prior period adjustment	(39,787)
Total RPTTF approved for distribution	\$ 671,444

Pursuant to HSC section 34177 (l) (1) (E), agencies are required to use all available funding sources prior to RPTTF for payment of enforceable obligations. Beginning with the ROPS 13-14B period, Finance required successor agencies to identify fund balances for various types of funds in its possession. During our ROPS 13-14B review, Finance requested financial records to support the fund balances reported by the Agency; however, Finance was unable to reconcile the financial records to the amounts reported. As a result, Finance will continue to

work with the Agency after the ROPS 13-14B review period to properly identify the Agency's fund balances. If it is determined the Agency possesses fund balances that are available to pay approved obligations, the Agency should request the use of these fund balances prior to requesting RPTTF in ROPS 14-15A.

Please refer to the ROPS 13-14B schedule that was used to calculate the approved RPTTF amount:

[http://www.dof.ca.gov/redevelopment/ROPS/ROPS 13-14B Forms by Successor Agency/](http://www.dof.ca.gov/redevelopment/ROPS/ROPS_13-14B_Forms_by_Successor_Agency/).

Absent a Meet and Confer, this is Finance's final determination related to the enforceable obligations reported on your ROPS for January 1 through June 30, 2014. This determination applies only to items where funding was requested for the six month period. Finance's determination is effective for this time period only and should not be conclusively relied upon for future periods. All items listed on a future ROPS are subject to a subsequent review and may be denied even if it was or was not denied on this ROPS or a preceding ROPS. The only exception is for those items that have received a Final and Conclusive determination from Finance pursuant to HSC 34177.5 (j). Finance's review of items that have received a Final and Conclusive determination is limited to confirming the scheduled payments as required by the obligation.

The amount available from the RPTTF is the same as the amount of property tax increment that was available prior to enactment of ABx1 26 and AB 1484. This amount is not and never was an unlimited funding source. Therefore, as a practical matter, the ability to fund the items on the ROPS with property tax is limited to the amount of funding available to the successor agency in the RPTTF.

To the extent proceeds from bonds issued after December 31, 2010 exist and are not encumbered by an enforceable obligation pursuant to HSC section 34171 (d), HSC section 34191.4 (c)(2)(B) requires these proceeds be used to defease the bonds or to purchase those same outstanding bonds on the open market for cancellation.

Please direct inquiries to Wendy Griffe, Supervisor or Jenny DeAngelis, Lead Analyst at (916) 445-1546.

Sincerely,



JUSTYN HOWARD
Assistant Program Budget Manager

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