



December 17, 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

This letter supersedes the California Department of Finance's (Finance) Recognized Obligation Payment Schedule (ROPS) letter dated November 8, 2013. 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 Finance on September 27, 2013, for the period of January through June 2014. Finance issued a ROPS determination letter on November 8, 2013. Subsequently, the Agency requested a Meet and Confer session on one or more of the items denied by Finance. The Meet and Confer session was held on November 22, 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 the specific items being disputed.

- 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 the former Redevelopment Agency's (RDA) funds.

The Agency contends the item is an enforceable obligation and eligible for payment from the 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 obligation. Therefore, the amended and restated agreement is not an enforceable obligation, and not eligible for Agency funds.

During the Meet and Confer process, the Agency contended that this item is listed on the ROPS to show the payment made by the City. However, Section 5.01 (b) of the Trust Agreement states that the payments shall be made by the City directly to the Trustee. As such, this item should not be listed on the ROPS.

- 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 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, 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 on this ROPS. Finance continues to deny this item. 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 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 entered into on April 24, 2012, is a new 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. Finance continues to deny this item. The legal fees are associated with litigation between the City, 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 from the RPTTF.

In addition, pursuant to HSC section 34177 (f), the Agency is required to enforce the former RDA's rights for the benefit to the taxing entities. This would include protecting the assets of the former RDA. In lawsuits 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 funding 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. The Agency's maximum approved RPTTF distribution for the reporting period is \$549,569 as summarized below:

<b>Approved RPTTF Distribution Amount For the period of January through June 2014</b>	
Total RPTTF requested for non-administrative obligations	810,156
Total RPTTF requested for administrative obligations	125,000
<b>Total RPTTF requested for obligations</b>	<b>\$ 935,156</b>
<b>Total RPTTF requested for non-administrative obligations</b>	<b>810,156</b>
<b>Denied Items</b>	
Item No. 10	(223,925)
Item No. 11	(121,875)
<b>Total RPTTF approved for non-administrative obligations</b>	<b>464,356</b>
<b>Total RPTTF requested for administrative obligations</b>	<b>125,000</b>
<b>Total RPTTF approved for administrative obligations</b>	<b>125,000</b>
<b>Total RPTTF approved for obligations</b>	<b>589,356</b>
ROPS III prior period adjustment	(39,787)
<b>Total RPTTF approved for distribution</b>	<b>\$ 549,569</b>

Pursuant to HSC section 34177 (l) (1) (E), agencies are required to use all available funding sources prior to the 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 funding 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/).

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 section 34177.5 (i). 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 Evelyn Suess, Dispute Resolution Supervisor, or Derk Symons, 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