

December 17, 2015

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 18, 2015. Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of Sunnyvale Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule (ROPS 15-16B) to Finance on October 5, 2015, for the period of January 1 through June 30, 2016. Finance issued a ROPS determination letter on November 18, 2015. Subsequently, the Agency requested a Meet and Confer session on one or more of the determinations made by Finance. The Meet and Confer session was held on December 3, 2015.

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 determination being disputed.

- Pursuant to HSC section 34186 (a) (1), the Agency was required to report on the ROPS 15-16B form the estimated obligations versus actual payments (prior period adjustment) associated with the January through June 2015 period (ROPS 14-15B). HSC section 34186 (a) (1) also specifies the prior period adjustment self-reported by the Agency is subject to review by the county auditor-controller (CAC). The amount of Redevelopment Property Tax Trust Fund (RPTTF) funding approved in the table on page 3 includes the prior period adjustment resulting from the CAC's review of the Agency's self-reported prior period adjustment.

During the Meet and Confer process, the Agency objected to the CAC's adjustment of the appraisal costs and requested that Finance ignore this adjustment. The CAC made an adjustment to the self-reported amount totaling \$15,000 related to appraisal costs (Item No. 8) stating that the appraisal costs should not be allowed because: (1) the Agency could not provide Oversight Board approval for the agreement/appraisal, (2) no Long-Range Property Management Plan has been prepared, and (3) the contract for appraisal services was not with the Agency, but with the City of Sunnyvale (City). Finance accepts the CAC's adjustment because the unsigned proposal of services provided was addressed to the City, not the Agency, and the invoices provided were also addressed to the City, not the Agency. Therefore, Finance continues to include the

prior period adjustment resulting from the CAC's review of the Agency's self-reported prior period adjustment.

The Agency also contested Item No. 14 during the Meet and Confer. However, pursuant to HSC section 34177 (m) (1), items that are the subject of litigation disputing Finance's previous or related determination are not eligible for meet and confer. As such, we continue to make the following determination:

- Item No. 14 – Amended and Restated Reimbursement Agreement (Agreement) for 1998 Certificates of Participation in the amount of \$3,850,753 requested for ROPS 15-16B and total outstanding amount of \$30,314,960 is not allowed. Finance continues to deny this item. This item corresponds to Item No.13 listed on ROPS 14-15B and has been repeatedly denied.

The Agreement is between the Agency and the City of Sunnyvale for the purpose of reimbursing payments to the 1998 Certificates of Participation. Finance initially denied this item pursuant to HSC section 34171 (d) (2), which states that agreements, contracts, or arrangements between the city that created the redevelopment agency (RDA) and the former RDA are not enforceable obligations.

The Agency stated that this Agreement was reentered into pursuant to HSC section 34178 (a). However, it is our understanding that neither the OB nor Finance approved the terms of the Agreement. During the ROPS 14-15B Meet and Confer process, the Agency contended that the OB approved a motion on April 9, 2012. Based on the approved minutes dated May 14, 2012, a motion was moved and passed to approve the obligation for the 1998 Certificates of Participation as Item 2 on the ROPS subject to the Agency staff working out an appropriate reimbursement agreement. This OB action merely authorized staff to work out a reimbursement agreement; to our knowledge, it did not approve the reimbursement agreement that was entered into as the actual agreement was not presented to the OB for consideration. Moreover, the OB's motion did not contemplate any terms related to the proposed agreement. Therefore, the actual reimbursement agreement that was entered into was never reviewed or approved by the OB nor was it provided to Finance for our review.

In addition, the obligation title states this is an amended and restated reimbursement agreement; however, it is our understanding that there is not an original reimbursement agreement to the 1998 Certificates of Participation. During the ROPS 14-15B Meet and Confer process, the Agency contended that the 2012 Amended and Restated Reimbursement Agreement is an amendment and restatement of the 1977 Reimbursement Agreement. However, the 1977 Reimbursement Agreement is not an enforceable obligation because it was not entered into at the time of issuance of the indebtedness obligations (the 1998 Certificates of Participation) nor was it solely for the purpose of securing or repaying those indebtedness obligations. The Agency did not provide an agreement that was entered into at the time of issuance of the indebtedness obligations (the 1998 Certificates of Participation) and solely for the purpose of securing or repaying those indebtedness obligations. Therefore, amended and restated is not an accurate description of the Agreement as there is no agreement specifically related to the 1998 Certificates of Participation to be amended and restated.

As such, this item is not an enforceable obligation and RPTTF funding in the amount of \$3,850,753 is denied.

In addition, per Finance's letter dated November 18, 2015, we continue to make the following determinations not contested by the Agency during the Meet and Confer:

The administrative costs claimed are within the fiscal year administrative cap pursuant to HSC section 34171 (b) (2). However, Finance notes the OB has approved an amount that appears excessive given the number and nature of the obligations listed on the ROPS. HSC section 34179 (i) requires the OB to exercise a fiduciary duty to the taxing entities. Therefore, Finance encourages the OB to use adequate discretion when evaluating the administrative resources required to successfully wind-down the Agency.

In addition, Finance noted on the Agency's ROPS 14-15B prior period adjustment worksheet, the Agency's expenditures exceeded Finance's authorization for the following items:

Other Funds totaling \$7,778 – Item No. 1, \$475; and Item No. 9, \$7,303.

Per HSC section 34177 (a) (3), only those payments listed on a ROPS may be made by the Agency from the funds specified on the ROPS up to the amount authorized by Finance. HSC sections 34177 (a) (4) and 34173 (h) (1) provide mechanisms when Agency payments must exceed the amounts authorized by Finance. Please ensure the proper expenditure authority is received from your OB and Finance prior to making payments on enforceable obligations.

Except for the item denied in whole, Finance is not objecting to the remaining items listed on your ROPS 15-16B. The Agency's maximum approved RPTTF distribution for the reporting period is \$340,899 as summarized in the Approved RPTTF Distribution table below:

| <b>Approved RPTTF Distribution<br/>For the period of January through June 2016</b> |                     |
|--|---------------------|
| Total RPTTF requested for non-administrative obligations                           | 4,150,374           |
| Total RPTTF requested for administrative obligations                               | 125,000             |
| <b>Total RPTTF requested for obligations on ROPS 15-16B</b>                        | <b>\$ 4,275,374</b> |
| <b>Total RPTTF requested for non-administrative obligations</b>                    | <b>4,150,374</b>    |
| <u>Denied Item</u>   |                     |
| Item No. 14  | (3,850,753)         |
| <b>Total RPTTF authorized for non-administrative obligations</b>                   | <b>\$ 299,621</b>   |
| <b>Total RPTTF requested for administrative obligations</b>                        | <b>125,000</b>      |
| <b>Total RPTTF authorized for administrative obligations</b>                       | <b>\$ 125,000</b>   |
| <b>Total RPTTF authorized for obligations</b>                                      | <b>\$ 424,621</b>   |
| ROPS 14-15B prior period adjustment  | (83,722)            |
| <b>Total RPTTF approved for distribution</b>                                       | <b>\$ 340,899</b>   |

On the ROPS 15-16B form, the Agency reported cash balances and activity for the period January 1 through December 31, 2015. Finance will perform a review of the Agency's self-reported cash balances on an ongoing basis. Please be prepared to submit financial records and bridging documents to support the cash balances reported upon request. If it is determined the Agency possesses cash balances that are available to pay approved obligations, HSC section 34177 (l) (1) (E) requires these balances be used prior to requesting RPTTF.

Please refer to the ROPS 15-16B schedule used to calculate the total RPTTF approved for distribution:

<http://www.dof.ca.gov/redevelopment/ROPS>

This is Finance's final determination related to the enforceable obligations reported on your ROPS for January 1 through June 30, 2016. This determination only applies to items when 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 ROPS periods. All items listed on a future ROPS are subject to review and may be denied even if it was not denied on this ROPS or a preceding ROPS. The only exception is for items that have received a Final and Conclusive determination from Finance pursuant to HSC section 34177.5 (i). Finance's review of Final and Conclusive items 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 available prior to the enactment of the redevelopment dissolution statutes. 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 Agency in the RPTTF.

Please direct inquiries to Evelyn Suess, Dispute Resolution Supervisor, or Mary Halterman, Analyst, at (916) 445-3274.

Sincerely,



JUSTYN HOWARD  
Program Budget Manager

cc: Ms. Grace Leung, Director of Finance, City of Sunnyvale  
Ms. Emily Harrison, Finance Agency Director, Santa Clara County