



April 14, 2013

Mr. Brice McQueen, Successor Agency Manager
City of Sunnyvale Successor Agency
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 13-14A) to the California Department of Finance (Finance) on March 1, 2013 for the period of July through December 2013. Finance has completed its review of your ROPS 13-14A, 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:

- Item No. 2 – 1998 Certificates of Participation (Parking Facility Funding) in the amount of \$12,214,314. Finance continues to deny this item. The certificates are enforceable obligations; however, Finance denied the item as the payment is pledged and secured by rental payments required by the City of Sunnyvale (City).

The Agency contends that this item is an enforceable obligation because the 1977 First Amended Repayment Contract is a valid enforceable obligation pursuant to HSC Sections 34171 (d) (2) and 34178 (b) (1) 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 the 1998 Certificates of Participation was entered into on April 24, 2012, between the City and the Agency. The 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 item is not an enforceable obligation.

- Item No. 4 – 1977 Loan Repayment Agreement in the amount of \$28,210,296. Finance continues to deny this item at this time. Finance 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 that 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, so the former RDA could 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. Furthermore, the 1977 Lease Revenue Bonds have since been refunded and no further payments are necessary. 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.

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

Except for items denied in whole or in part as enforceable obligations, Finance is not objecting to the remaining items listed on your ROPS 13-14A. This determination applies only to items where funding was requested for the six month period. If you disagree with the determination with respect to any items on your ROPS 13-14A, 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 Redevelopment Property Tax Trust Fund (RPTTF) distribution for the reporting period is \$533,758 as summarized below:

Approved RPTTF Distribution Amount	
For the period of July through December 2013	
Total RPTTF funding requested for obligations	\$ 3,570,754
Minus: Six-month total for items denied or reclassified as administrative cost	
Item 2	984,564
Item 4	2,000,000
Total approved RPTTF for enforceable obligations	<u>\$ 586,190</u>
Plus: Allowable RPTTF distribution for ROPS 13-14A administrative cost	125,000
Minus: ROPS II prior period adjustment	<u>(177,432)</u>
Total RPTTF approved for distribution:	\$ 533,758

Pursuant to HSC Section 34186 (a), successor agencies were required to report on the ROPS 13-14A form the estimated obligations and actual payments (prior period adjustments) associated with the July through December 2012 period. HSC Section 34186 (a) also specifies

that the prior period adjustments self-reported by successor agencies are subject to audit by the county auditor-controller (CAC) and the State Controller. The amount of RPTTF approved in the above table includes the prior period adjustment resulting from the CAC's audit of the Agency's self-reported prior period adjustment.

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

[http://www.dof.ca.gov/redevelopment/ROPS/ROPS 13-14A Forms by Successor Agency/](http://www.dof.ca.gov/redevelopment/ROPS/ROPS%2013-14A%20Forms%20by%20Successor%20Agency/).

This is Finance's final determination related to the enforceable obligations reported on your ROPS for July 1 through December 31, 2013. 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 (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 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,



STEVE SZALAY
Local Government Consultant

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