

Response to Dissolution Audit
Conducted by the
County of Santa Clara Auditor-Controller



Prepared by
The Sunnyvale Redevelopment Successor Agency
456 West Olive Avenue
Sunnyvale, CA 94088
April 9, 2012

RESPONSE TO DISSOLUTION AUDIT

On April 5, 2012, County staff and staff from the audit firm MGO met with Sunnyvale Redevelopment Successor Agency (RSA) staff to review the interim procedures performed related to the draft initial Recognized Obligation Payment Schedule (ROPS). The audit has resulted in a determination from the County on each of the 12 items on the Draft ROPS. The City has prepared this response with respect to certain items that were excluded as non-enforceable obligations. Although this response only addresses the ROPS for the period of January through June, the RSA reserves its rights to dispute all determinations made by the audit regarding obligations at a later date and the failure of the RSA to raise an objection at this time does not result in a waiver of its rights to raise any such objection at a later date. The following is the written response on specific exclusions in the audit that staff recommends the Oversight Board reconsider:

Section 1 – Debt Obligations, Item 2 and 3

ROPS Item 2 – 1998 Certificates of Participation (Parking Facility Refunding)

This item represents the Agency's obligation for Certificates of Participation (COPs) that were issued to refund prior debt issuances for the Town Center parking facility. In 1977 and 1978, the Redevelopment Agency issued two series of parking lease revenue bonds to finance construction of the public parking garage adjacent to the Town Center Mall. Those parking lease revenue bonds were refinanced in 1992 and again in 1998 as COPs. The lease revenue bonds were, and the COPs are, secured by parking lease payments made by the City to the Agency. The Agency makes the debt service payments to the trustee and is obligated to reimburse the City for the parking lease payments pursuant to the terms of a repayment agreement (1977 City Loan) between the Agency and the City.

The RSA disagrees with the determination that this is not an enforceable obligation. The original debt issued by the Agency clearly meets the criteria of enforceable obligations under Section 34171(e). The current COPs debt was issued to refund the prior debt solely for the purpose of reducing the interest rate and thus saving money.

It does not make sense, in looking at the intent of the legislation, that as a result of refunding the debt from lease revenue bonds to COPs, it would not meet the criteria of 34171(e). The City should not now be in a position to have to make the choice to either default on the debt or pick up the Agency's debt service payments.

Alternatively, Section 34178(a) allows the Oversight Board to recognize the COPs as an enforceable obligation of the Agency. The City is requesting that the Oversight Board approve the COPs debt service payment pursuant to 34178(a) and retain this item on the ROPS.

ROPS Item 3 – Repayment Obligation – 1977 Loan Repayment Agreement

In 1977, a repayment agreement was entered into to reimburse the City for advancing funds to pay debt service payments on tax allocation bonds, for the repayment of parking lease payments made by the City for lease revenue bond payments, and startup land acquisition costs. For

various reasons, including the limitation on and roll-back of property tax rates imposed by Proposition 13, tax increment revenue was insufficient to pay the debt service on the Agency's tax allocation bonds and parking lease revenue bonds. As a result, the balance of the 1977 loan continued to grow through 1992.

Under the terms of the repayment agreement, the Redevelopment Agency is to repay the City any tax increment remaining after paying debt service and administrative expenses. Until 1992, no repayments could be made due to insufficient tax increment revenue. With RDA legislation changes in 1986, all tax increment was required to go to pay down this pre-1986 debt. Under these parameters, the Agency has used all funds received in each fiscal year to first make debt service payments and then all remaining funds were applied to the 1977 City Loan. This payment schedule was administered at the close of the fiscal year after receipt of all tax increment revenues for the fiscal year.

With the dissolution of the Redevelopment Agency on February 1, 2012, the Agency maintained the same payment schedule in reconciling the Agency's books on January 31, 2012. The Agency used all tax increment funds received through January 31, 2012 for debt service and then repayment of the 1977 City Loan.

The Auditor-Controller has excluded the January repayment on the 1977 reimbursement agreement because the Agency did not amend its Enforceable Obligation Payment Schedule (EOPS) to show payments by month through June. The Agency's active EOPS was adopted on August 23, 2011, in accordance with Health and Safety Code Section 34169(g). The EOPS lists all payments to be made through December 2011 by month and the total payment for each obligation to be made through the end of June 2012. Subsequent the EOPS, the Agency established the required Preliminary ROPS, listing all payments on the EOPS by month from August 2011 through June 2012. The SRA is only allowed to make payments on obligations listed on the Enforceable Obligation Payment Schedule (EOPS).

Although the law does not strictly require the Agency to amend the adopted EOPS and the 1977 City Loan payment is clearly listed on the adopted EOPS and the Preliminary ROPS, it is the recommendation of the County that the Agency adopt an amended EOPS breaking out the monthly payments from January through June. Staff has prepared an Amended EOPS (Attachment A).

The SRA disagrees with the determination that this payment is not an enforceable obligation and requests that the Oversight Board vote to put this item back on the ROPS. The Agency's 1977 reimbursement agreement was entered into to pay the Agency's debt service on debt issued to fund a valid redevelopment project. The City entered into this loan agreement fully expecting to be repaid. Its removal from the ROPS will put significant fiscal hardship on the City. Section 34167 (d) (2) clearly allows the Oversight Board to recognize the January payment on the 1977 City Loan as an enforceable obligation of the Agency. The RSA is requesting that the Oversight Board approve the loan obligation payment and to retain this item on the ROPS.

Section 2 – Contracts, Item 1

ROPS Item 6 – 2010 Amended Disposition and Development and Owner Participation Agreement Article 8

This item represents an obligation approved as a part of a development agreement between the Agency and Town Center property owner. The Agency's obligation is to make annual payments equal to the increase in the secured property tax generated by the development plus 50% in excess of a \$4.5 million cap per year as compensation for construction and maintenance of the public parking and infrastructure improvements for the Town Center project. This financing element is a key component of the development agreement that allowed the project to move forward.

The Town Center completion will foster economic growth, attract people to the downtown, and develop more retail by reinvigorating commercial uses. New development will add value to tax rolls, encourage further development, generate demand for downtown properties and increase property values. The Project would also provide an incentive for existing owners and the private sector to reinvest in properties. As Sunnyvale's only large scale retail center, a successful project will have a positive financial impact not only on the City, but the County and State as well.

The Agency's obligation to share in the tax increment generated by the project began in FY 2003/04 and ends in FY 2025/26. The accumulated tax increment and the annual payments are triggered upon reaching a certain milestone in the development. The accumulated tax increment obligation calculated from FY 2003/04 through FY 2010/11 equals approximately \$4.5 million. The obligation for FY 2011/12 is equal to approximately \$1.9 million. Although the development has not reached the milestone that triggers the payment, it is anticipated that the milestone may be reached in FY 2012/13. The \$2.7 payment listed on the ROPS represented the current year obligation plus an additional amount that was calculated based on how much tax increment was projected to be received in the current fiscal year. This was proposed in order to set aside as much of the accumulated tax increment owed as possible before the milestone is reached. Since no additional property tax revenue will be remitted to the RSA for the January through June ROPS, staff has modified the ROPS to delay the payment (Attachment B).

Although the payment has not been triggered, staff believes that it is prudent to plan for the obligation in advance of the requirement in order to insure that there is enough revenue set aside to make the obligation payment.

OTHER ITEMS

This response to the dissolution audit addresses the ROPS payments over the period of January through June 2012. It is limited to only the items that were excluded as non-enforceable obligations listed for payment during this period. Staff believes all items listed on the EOPS that were not scheduled for payments are enforceable obligations that meet the requirements of the legislation and should be listed on the ROPS in the future. These items will be addressed as required payments are scheduled on future ROPS.

AMENDED ENFORCEABLE OBLIGATION PAYMENT SCHEDULE (1/1/2012 - 6/30/2012)

under the Redevelopment Restructure Acts during the suspension period

Project Name / Debt Obligation	Payee	Description	Total Outstanding Debt or Obligation (until paid)	Total Due During Fiscal Year 2011/12	Payments by Month						Total (Jan-June)	Total (Feb-June)	Potential Sources of Funding	
					Jan	Feb	Mar	Apr	May	June				
1) 2003 Tax Allocation Refunding Bonds	US Bank	1977 Bonds issued to fund redevelopment projects in the Central Core Project area, refunded in 1992 and again in 2003.	7,235,082.00	609,776.00	109,308.00							\$ 109,308.00	\$ -	Redevelopment Property Tax Trust Fund
2) 1998 Certificates of Participation (Parking Facility Refunding)	US Bank	1978 Bonds issued to fund redevelopment projects in the Central Core Project area, refunded in 1992 and 1998.	14,625,954.00	1,205,118.00			256,959.00					\$ 256,959.00	\$ 256,959.00	Redevelopment Property Tax Trust Fund
3) Repayment Obligations-1977 Loan Repayment Agreement	City of Sunnyvale	Pursuant to the resolution that authorized the issuance of the 1977 Central Core Bonds, the Agency is obligated to use moneys from tax revenue to repay the City, with interest, for all rental payments under the Project Lease and for all other contributions (including transfer of land) which aided in the planning, acquisition, and construction of the Project.	41,607,073.00	3,884,706.00	3,884,706.00							\$ 3,884,706.00	\$ -	Redevelopment Property Tax Trust Fund
4) Repayment Obligations-1977 Loan Repayment Agreement	City of Sunnyvale	At the end of FY 10/11, RDA should have, as in prior years, applied remaining cash to repay the 1977 loan according to Sec. 3 of the First Amended Repayment Contract. Instead, the Agency retained \$1.8 million for anticipated expenditures of the Town Center Pollution Remediation Project. At the dissolution of RDA, the unspent balance was returned to the City.	1,741,956.00	1,741,956.00	1,741,956.00							\$ 1,741,956.00	\$ -	Funds from prior-year tax increment
5) Repayment Obligations-2003 Loan Repayment Agreement	City of Sunnyvale	The Agency is obligated to reimburse the City with interest for the administrative costs since 1986.	69,653,605.00	-								\$ -	\$ -	Redevelopment Property Tax Trust Fund
6) Repayment Obligations-2003 Loan Repayment Agreement	City of Sunnyvale	RDA is obligated to reimburse the City with interest for the project loan for plaza improvements.	6,437,807.00									\$ -	\$ -	Redevelopment Property Tax Trust Fund
7) 2010 Amended Disposition and Development and Owner Participation Agreement Article 8	Town Center Developer	Annual payment in consideration for the developer constructing and operating the required public improvements.	52,894,951.00									\$ -	\$ -	Redevelopment Property Tax Trust Fund
8) 2010 Amended Disposition and Development and Owner Participation Agreement Article 4	State Water Resources Control Board, legal fees and environmental work costs	Investigation and remediation of hazardous materials.	1,868,146.00	537,660.00	6,466.00						454,358.00	\$ 460,824.00	\$ 454,358.00	Redevelopment Property Tax Trust Fund
9) 2010 Amended Disposition and Development and Owner Participation Agreement Management	Agency staff and professional services	To monitor and administer rights and obligations under the ADDOPA	760,000.00											Redevelopment Property Tax Trust Fund
10) Housing Fund Deficit	City Low and Moderate Income Housing Fund (LMI)	The Agency needed all its tax increment to service pre-1986 bonded debt and pre-1986 debt owed to the City. The deposit of 20% of tax increment into the LMI Income Housing Fund was deferred until all pre-1986 debt obligations are repaid.	15,711,287.00	-								\$ -	\$ -	Redevelopment Property Tax Trust Fund
11) Administration and operation of Successor Agency	Agency staff and professional services	Administrative and legal services; General Fund in-lieu payments for treasury and accounting support.	4,417,627.00	372,357.00	14,444.00	37,681.20	37,681.20	37,681.20	37,681.20	37,681.20	37,681.20	\$ 202,850.00	\$ 188,406.00	Redevelopment Property Tax Trust Fund
12) RDA Special Projects	Professional services	Technical support and outside legal counsel services with dissolution and winding down of assets of RDA.	175,000.00	50,000.00	2,223.00	3,670.00	18,670.00	3,670.00	3,670.00	3,670.00	3,670.00	\$ 35,573.00	\$ 33,350.00	Redevelopment Property Tax Trust Fund
13) Bond Covenants Other Than Principal and Interest Debt Service Payments	Professional services	Fees for trustee services, audit, rebate analysis, disclosure consulting.	216,000.00	18,000.00	2,175.00						9,743.00	\$ 11,918.00	\$ 9,743.00	Redevelopment Property Tax Trust Fund
Totals			\$ 217,344,488.00	\$ 8,419,573.00	\$ 5,761,278.00	\$ 41,351.20	\$ 313,310.20	\$ 41,351.20	\$ 41,351.20	\$ 505,452.20	\$ 6,704,094.00	\$ 942,816.00		

Name of Successor Agency:		Sunnyvale Redevelopment Successor Agency												
Project Area(s)		Central Core												
REVISED CERTIFIED RECOGNIZED OBLIGATION PAYMENT SCHEDULE (1/1/2012 - 6/30/2012)												ATTACHMENT B		
under the Redevelopment Restructure Acts														
Project Name / Debt Obligation	Payee	Description	Total Outstanding Debt or Obligation (FY 11/12 until paid)	Total Due During Fiscal Year 2011/12	Payments by Month							Total (Jan-June)	Total (Feb-June)	Sources of Funding
					Jan	Feb	Mar	Apr	May	June				
					1/8-2/4	2/5-3/3	3/4-3/31	4/1-4/28	4/29-5/26	5/27-6/30				
1) 2003 Tax Allocation Refunding Bonds	US Bank	1977 Bonds issued to fund redevelopment projects in the Central Core Project area, refunded in 1992 and again in 2003.	7,235,082.00	609,776.00	109,308.00						\$ 109,308.00	\$ -	Tax Increment Received Before 1/31/2012	
2) 1998 Certificates of Participation (Parking Facility Refunding)	US Bank	1978 Bonds issued to fund redevelopment projects in the Central Core Project area, refunded in 1992 and 1998.	14,625,954.00	1,205,118.00			256,959.00				\$ 256,959.00	\$ 256,959.00	Redevelopment Property Tax Trust Fund	
3) Bond Covenants Other Than Principal and Interest Debt Service Payments	Professional services	Fees for trustee services, rebate analysis, disclosure consulting.	52,305.00	6,851.00						4,755.00	\$ 4,755.00	\$ 4,755.00	Redevelopment Property Tax Trust Fund	
4) Bond Covenants Other Than Principal and Interest Debt Service Payments	Professional services	Audit fees	163,695.00	11,149.00	2,175.00					4,988.00	\$ 7,163.00	\$ 4,988.00	Redevelopment Property Tax Trust Fund	
5) Repayment Obligations-1977 Loan Repayment Agreement	City of Sunnyvale	Pursuant to the resolution that authorized the issuance of the 1977 Central Core Bonds, the Agency is obligated to use moneys from tax revenue to repay the City, with interest, for all rental payments under the Project Lease and for all other contributions (including transfer of land) which aided in the planning, acquisition, and construction of the Project.	41,607,073.00	3,884,706.00	3,884,706.00						\$ 3,884,706.00	\$ -	Redevelopment Property Tax Trust Fund	
6) Repayment Obligations-2003 Loan Repayment Agreement	City of Sunnyvale	The Agency is obligated to reimburse the City with interest for the administrative costs since 1986.	69,653,605.00	-							\$ -	\$ -	Redevelopment Property Tax Trust Fund	
7) Repayment Obligations-2003 Loan Repayment Agreement	City of Sunnyvale	RDA is obligated to reimburse the City with interest for the project loan for plaza improvements.	6,437,807.00								\$ -	\$ -	Redevelopment Property Tax Trust Fund	
8) 2010 Amended Disposition and Development and Owner Participation Agreement Article 8	Town Center Developer	Annual payment in consideration for the developer constructing and operating the required public improvements.	52,894,951.00	-							\$ -	\$ -	Redevelopment Property Tax Trust Fund	
9) 2010 Amended Disposition and Development and Owner Participation Agreement Article 4	State Water Resources Control Board, legal fees and environmental work costs	Investigation and remediation of hazardous materials.	1,868,146.00	489,591.00	6,466.00					454,358.00	\$ 460,824.00	\$ 454,358.00	Redevelopment Property Tax Trust Fund	
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12) Administration and operation of Successor Agency	Agency staff and professional services	Administrative and legal services; General Fund in-lieu payments for treasury and accounting support.	4,417,627.00	354,357.00	14,444.00	37,681.20	37,681.20	37,681.20	37,681.20	37,681.20	\$ 202,850.00	\$ 188,406.00	Redevelopment Property Tax Trust Fund	
13) RDA Special Projects	Professional services	Technical support and outside legal counsel services with dissolution and winding down of assets of RDA.	175,000.00	50,000.00	2,223.00	3,670.00	18,670.00	3,670.00	3,670.00	3,670.00	\$ 35,573.00	\$ 33,350.00	Redevelopment Property Tax Trust Fund	
Totals			\$ 215,602,532.00	\$ 6,611,548.00	\$ 4,019,322.00	\$ 41,351.20	\$ 313,310.20	\$ 41,351.20	\$ 41,351.20	\$ 505,452.20	\$ 4,962,138.00	\$ 942,816.00		