

ATTACHMENT 1
MEET AND CONFER REQUEST FORM
SANTA CLARA

Pursuant to and as required by Health and Safety Code (“HSC”) section 34176(a)(2), the City of Santa Clara (“City”), in its capacity as the successor housing entity to the former Santa Clara Redevelopment Agency, submitted to the Department of Finance (“Department”) on July 31, 2012 a list of all housing assets transferred to the City as the successor housing entity between February 1, 2012 and the date the list was created (“Housing Asset List”). Based upon its review of the Housing Asset List, the Department in a letter dated August 30, 2012 objected to inclusion of certain items set forth therein (“Disputed Items”). In a letter dated September 4, 2012 to the Department, the City invoked the meet and confer process pursuant to HSC 34176(a)(2) with regards to all of the Disputed Items objected to by the Department. Thereafter, the Department notified the City via an email dated September 14, 2012 that the City will be granted its request to meet and confer, provided, however, the City complete the DF-MC Form as provided by the Department and supplemented by this Attachment No. 1 (collectively, the “DF-MC Form”). Accordingly, the City respectfully submits this DF-MC Form to resolve any misunderstandings with respect to the remaining Disputed Items identified herein. In addition, the City has reviewed the Disputed Items objected to by the Department and has determined to withdraw its objection to the following Disputed Items from being removed from the Housing Asset List:

- Exhibit A, Item 5 – Land at 2525 El Camino Real (ROEM Project).
- Exhibit A, Item 7 and 8 – Master Lease[s] for BWC Quetzal House [and Senior Housing Solutions].
- Exhibit C, Item 4 – The Habitat for Humanity \$381,289 line item.
- Exhibit C, Item 6 – Based upon conversations with the City and a review of underlying agreements, the Housing Services line item is a grant receivables already included in Exhibit D and is a duplicate of the amounts indicated as being owed for the obligation. The balance of the amount was associated with anticipated administrative and monitoring costs for the successor housing entity associated with these grants. Administrative and monitoring costs are not housing encumbrance assets and are not eligible for transfer.¹

¹ The City agrees, the Housing Services line item is for grant receivables and is properly identified on Exhibit D only as “housing asset” within the meaning of HSC section 34176(e)(3). As the grant receivables have been fully disbursed, it is proper that the balance, if any, not be characterized as housing encumbrance assets if used for anticipated administrative and monitoring costs for the successor housing entity.

- Exhibit D, Item 35 - \$7 million loan for 2525 El Camino Real.²
- Exhibit D, Items 88 through 99 – Grants totaling \$465,129 were entered into after June 27, 2011.

Notwithstanding the foregoing, the City, in its capacity as the successor housing entity to the former Santa Clara Redevelopment Agency, and the Santa Clara Housing Authority, in its capacity authorized to carry out the activities of the successor housing entity, do not intend to waive any constitutional, legal or equitable rights and expressly reserves any and all rights, privileges, and defenses available under law and equity with respect to this DF-MC Form and further reserve the right to supplement, clarify, revise, or correct any or all of the responses and statements herein, and to assert additional information, in one or more subsequent supplemental response(s).

On behalf of the City, we look forward to the meet and confer process with the Department. Should you have any questions regarding this DF-MC Form, please contact Ron Garratt, Interim City Manager, at (408) 615-2210.

DETAIL OF REQUEST - ITEM NO. 1

A. Summary of Disputed Issue(s) (*Must be specific.*)

From Department's letter dated August 30, 2012 to City of Santa Clara:

"Exhibit A, Item 6 – Land at 90 N. Winchester Boulevard (BAREC Project) does not qualify as a housing asset because the agreement was amended after June 27, 2012. HSC section 34163(c) prohibits amending or modifying existing agreements."

B. Background/History (*Provide relevant background/history, if applicable.*)

The history of the subject Property is as follows:

- On July 5, 2005, the Santa Clara Redevelopment Agency ("**RDA**") committed to purchase the subject Property from the State of California, Department of General Services ("**State**") pursuant to a Purchase and Sale Agreement ("**PSA**") for development of a 165 unit affordable housing project for seniors (the "**BAREC Project**"). Under the PSA at section 6.4, entitled Close of Sale, the close of escrow shall occur within 10 days after the close of the sale of other surplus property owned by the State to a private third party developer ("**SummerHill**") for market rate housing (the "**SummerHill Sale**").

² The City agrees with the Department that the \$249,425 associated with the Predevelopment Loan Agreement dated April 19, 2011 is an eligible transfer.

- On June 19, 2007, the RDA, City, State and SummerHill entered into a Development Agreement, recorded as Document No. 19519315 in the Office of the Santa Clara County Recorder.
- On June 27, 2011, the Governor signed ABx1 26 (“**Dissolution Act**”).
- On December 13, 2011, the State and the Authority entered into a First Amendment to Purchase and Sale Agreement (“**First Amendment to PSA**”) wherein State expressly recognized and approved of the assignment of the PSA from the RDA to the Authority.³
- On or about December 22, 2011, the SummerHill Sale occurred.
- On or about January 5, 2012, escrow closed for the sale of the subject Property from the State to the Authority.
- On June 27, 2012, the Dissolution Act was amended when the Governor signed AB 1484.

C. Justification (*Provide additional attachments to this form, as necessary.*)

The subject Property is a “housing asset” within the meaning of HSC section 34167(e)(1) because the subject Property was acquired pursuant to a legally binding and enforceable agreement or contract entered into in 2005, long before the Dissolution Act. Under the

³ Paragraph 6 of the First Amendment to PSA provides, in pertinent part, that “the State consents to the Assignment (as defined therein), as described above in Recital B, to the Authority on the condition that the [RDA] remains fully obligated under the terms of the Purchase Agreement...”

Recital B of the First Amendment to PSA provides as follows:

“Pursuant to that certain Assignment and Assumption Agreement dated March 8, 2011 by and between the City of Santa Clara, a public body, corporate and politic (“City”) and the Authority (the “Assignment Agreement”) and that certain Cooperation Agreement for Payment of Costs Associated with Certain Redevelopment Agency Funded Low and Moderate Income Housing Projects dated February 8, 2011 by and between the City and the Agency (the “Cooperation Agreement” and with the Assignment Agreement collectively referred to herein as the “Assignment”), the Agency’s rights, interests and obligations under the Purchase Agreement were assigned to the Authority by the City with the consent of the Agency.”

PSA at section 6.4, entitled Close of Sale, the RDA was obligated to close escrow on the sale of the subject Property within 10 days after the close of the SummerHill Sale. The SummerHill Sale closed on December 22, 2011, therefore the RDA was obligated to purchase the subject Property within 10 days thereafter.

However, the RDA assigned its rights under the PSA to the Authority pursuant to the Assignment (as defined in Recital B in the First Amendment to PSA and used herein) in March 2011. This assignment was expressly consented to by the State pursuant to paragraph 6 of the First Amendment to PSA “on the condition that the Agency remains fully obligated under the terms of the Purchase Agreement.” Therefore, even if the assignment is unauthorized pursuant to HSC section 34163(c), the RDA would still have been obligated to purchase the subject Property under the PSA. The amendment to the Purchase and Sale Agreement did not change the essential obligation of the RDA to purchase the subject Property but rather clarified certain terms and conditions.

Because the RDA and/or Authority closed escrow on the subject Property on January 5, 2012 pursuant to a valid enforceable obligation, it is proper to consider the subject Property a “housing asset” within the meaning of HSC section 34176(e)(1).

DETAIL OF REQUEST – ITEM NO. 2

A. Summary of Disputed Issue(s) (*Must be specific.*)

From Department’s letter dated August 30, 2012 to City of Santa Clara:

“Exhibit C, Item 1 - \$1.1 million amount associated with the Bill Wilson Center. Based upon conversations with the City, it is our understanding that this obligation has been paid in full. Therefore, the \$1.1 million is not an enforceable obligation and is not an encumbrance housing asset.”

B. Background/History (*Provide relevant background/history, if applicable.*)

The history of the subject \$1.1 million is as follows:

- On October 10, 2006, the RDA entered in a Funding Agreement with the Bill Wilson Center (“**BWC**”) wherein the RDA agreed to loan up to \$93,955 (“**Predevelopment Loan**”) for certain predevelopment costs for development of an at-risk youth housing project (“**Project**”).
- On April 17, 2007, the RDA and BWC entered into an Affordable Housing Loan Agreement (“**AHA**”) wherein the RDA agreed to loan up to \$3,500,000 (the “**RDA Loan**”) for the acquisition, predevelopment, tenant relocation and building rehabilitation expenses for the improvements on the subject Property.

- On or about May 5, 2007, escrow closed wherein BWC acquired the subject Property with proceeds from the RDA Loan. The RDA Loan is evidenced by a promissory note, secured by a deed of trust on the subject Property. Additional RDA Loan proceeds were disbursed for commencement of construction of the Project.
- On June 23, 2009, the AHA was amended by a First Amendment wherein the RDA loan was increased by \$805,956 to a maximum, aggregate total of \$4,305,956.
- On or about July 23, 2009, the relocation component of the Project was completed.
- On March 30, 2010, the AHA was further amended by a Second Amendment wherein the RDA was increased by \$461,609 to a maximum, aggregate total of \$4,767,565.
- On January 13, 2011, the rehabilitation component of the Project commences.
- On June 27, 2011, the Governor signed ABx1 26 (“**Dissolution Act**”).
- On April 26, 2012, occupancy of the Project commences.
- On June 27, 2012, the Dissolution Act was amended when the Governor signed AB 1484.
- As of September 24, 2012, completion of the Project is ongoing.

C. Justification (*Provide additional attachments to this form, as necessary.*)

The AHA is a legally binding and enforceable agreement or contract entered into in 2007 and amended in 2010, long before the Dissolution Act. Therefore, the AHA is a valid preexisting “enforceable obligation” within the meaning of HSC section 34171(d)(1)(E). However, the Department is mistaken that the RDA Loan has been paid in full. Instead, there remains \$1.13 million in RDA Loan proceeds yet to be disbursed for completion of the Project, all of which are part of a validly existing preexisting “enforceable obligation” which should be considered a “housing asset” within the meaning of HSC section 34171(d)(1)(E).

DETAIL OF REQUEST – ITEM NO. 3

A. Summary of Disputed Issue(s) (*Must be specific.*)

From Department’s letter dated August 30, 2012 to City of Santa Clara:

“Exhibit C, Item 2 - \$4.6 million amount associated with the Monroe/San Tomas site. Based upon conversations with the City, we understand that no contracts have been entered into by June 27, 2011; therefore, this item is not an enforceable obligation.”

B. Background/History (*Provide relevant background/history, if applicable.*)

The history of the subject \$4.6 million is as follows:

- On December 14, 2004, the RDA acquired the subject Property from the County of Santa Clara pursuant to an Agreement for Purchase of Real Property (the “**Purchase Agreement**”) with low- and moderate income housing funds pursuant to HSC section 33334.16 requiring the subject Property be developed for affordable housing.
- On January 21, 2005, the Grant Deed to the subject Property was recorded in the Official Records of Santa Clara County pursuant to Document No. 18198252.
- On June 23, 2011, the Grant Deed dated March 8, 2011 was recorded in the Official Records of Santa Clara County pursuant to Document No. 21216119 wherein the subject Property was conveyed from the RDA to the Authority pursuant to RDA Resolution No. 11-13 in order to increase, improve and preserve the community’s supply of affordable housing, including to develop the Monroe/San Tomas Project using the subject \$4.6 million.
- On June 27, 2011, the Governor signed ABx1 26 (“**Dissolution Act**”).
- On June 27, 2012, the Dissolution Act was amended when the Governor signed AB 1484.

C. Justification (*Provide additional attachments to this form, as necessary.*)

The subject \$4.6 million is a “housing asset” within the meaning of HSC section 34167(e)(2) because the subject \$4.6 million is subject to validly existing “enforceable obligations” within the meaning of HSC sections 34167(d)(3) and 34171(d)(1)(C). Under HSC sections 34167(d)(3) and 34171(d)(1)(C), “preexisting obligations to the state or obligations imposed by state law” are considered “enforceable obligations” under the Dissolution Act.

Here, the Purchase Agreement obligated the RDA to develop the subject Property as affordable housing pursuant to HSC section 33334.16, which provides in pertinent part:

“For each interest in real property acquired using moneys from the Low and Moderate Income Housing Fund, the agency shall, within five years from the date it first acquires

the property interest for the development of affordable housing..., initiate activities consistent with the development of the property for that purpose...” (emphasis added)

Under HSC section 33334.16, if the RDA does not satisfy the obligation to develop affordable housing on the subject Property, it could become subject to legal action. The subject \$4.6 million is encumbered by an enforceable obligation within the meaning of HSC sections 34167(d)(3) and 34171(d)(1)(C) and should, therefore, properly be considered a “housing asset” within meaning of HSC section 34176(e)(2).

DETAIL OF REQUEST – ITEM NO. 4

A. Summary of Disputed Issue(s) (*Must be specific.*)

From Department’s letter dated August 30, 2012 to City of Santa Clara:

“Exhibit C, Item 3 - \$8 million encumbrance for the BAREC Project. The Purchase and Sale Agreement was entered into on August 20, 2011. HSC section 34163(b) prohibits a redevelopment agency from entering into a contract with any entity after June 27, 2011.”

B. Background/History (*Provide relevant background/history, if applicable.*)

The history of the subject \$8 million for the BAREC Project is as follows:

- On July 5, 2005, the RDA committed to purchase the subject Property from the State of California, Department of General Services (“**State**”) pursuant to a Purchase and Sale Agreement (“**PSA**”) for development of a 165 unit affordable housing project for seniors (the “**BAREC Project**”). Under the PSA at section 6.4, entitled Close of Sale, the close of escrow shall occur within 10 days after the close of the sale of other surplus property owned by the State to a private third party developer (“**SummerHill**”) for market rate housing (the “**SummerHill Sale**”).
- On June 19, 2007, the RDA, City, State and SummerHill entered into a Development Agreement, recorded as Document No. 19519315 in the Office of the Santa Clara County Recorder.
- On June 27, 2011, the Governor signed ABx1 26 (“**Dissolution Act**”).
- On December 13, 2011, the State and the Authority entered into a First Amendment to Purchase and Sale Agreement (“**First Amendment to PSA**”) wherein State expressly recognized the validity of the Cooperation/Assignment Agreements and the eligibility of the assignments pursuant thereto.
- On or about December 22, 2011, the SummerHill Sale occurred, prompting the close of escrow of the subject Property pursuant to the PSA.

- On or about January 5, 2012, escrow closed for the sale of the subject Property from the State to the Authority pursuant to a State of California Grant Deed (Senior Housing Site) (“**Grant Deed**”) recorded January 5, 2012 as Document No. 21485774 in the Official Records of Santa Clara County.
- On June 27, 2012, the Dissolution Act was amended when the Governor signed AB 1484.

C. Justification (*Provide additional attachments to this form, as necessary.*)

The PSA was entered into on July 5, 2005, not August 20, 2011. Thereafter, the RDA assigned its rights under the PSA to the Authority pursuant to the Assignment (as defined above) in March 2011. This assignment was expressly consented to by the State pursuant to paragraph 6 of the First Amendment to PSA “on the condition that the Agency remains fully obligated under the terms of the Purchase Agreement.” Therefore, even if the assignment is unauthorized pursuant to HSC section 34163(c), the RDA would still have been obligated to develop the BAREC Project pursuant to the original PSA.

With respect to the subject \$8 million, the PSA expressly requires the RDA and/or Authority to develop the BAREC Project on the subject Property. Specifically, the PSA at section 2.2, entitled Agency Costs in Addition to Price, provides that the RDA and/or Authority “shall be responsible for all costs relating to the transfer of title and/or development of the [subject Property], including, but not limited to all costs associated with the preparation and approval of the plan for the development of the [subject Property], administrative, consultant and third-party costs and legal fees incurred by the [RDA and/or Authority], and the [subject Property’s] proportional share of mitigation measures...including improvements...” (emphasis added)

Section 2.12 of the Development Agreement, entitled Permitted Uses, at subsection (b)(1) provides, “[i]f the [RDA and/or Authority] closes escrow on the [subject Property] in accordance with the [PSA], then the [subject Property] shall be developed for up to 165 units of senior residences which shall be made affordable to low- and very low-income seniors in accordance with the requirements of the City of Santa Clara.” (emphasis added) And finally, the recorded Grant Deed at paragraph 3 provides that the RDA and/or Authority “shall commence development of the [BAREC Project].” (emphasis added) Thus, it was contemplated by the parties that the purchase of the subject Property be made on the condition the RDA and/or Authority develop the BAREC Project. However, development of the BAREC Project cannot be accomplished without the use of the subject \$8 million.

Moreover, the PSA, the Development Agreement and the Grant Deed all reference Government Code section 11011.1 et seq. The State sold the subject Property to the RDA and/or Authority as surplus residential property. Under HSC sections 34167(d)(3)

and 34171(d)(1)(C), “preexisting obligations to the state or obligations imposed by state law” are considered “enforceable obligations” under the Dissolution Act.

Here, the RDA and/or Authority became obligated under Government Code sections 54220 – 54227 and 54237(d) to develop the subject Property as affordable housing. Pursuant to the Government Code, the State offered the subject Property to “housing-related private and public entities at a reasonable price, which is best suited to economically feasible use of the property as decent, safe, and sanitary housing at affordable rents and affordable prices for persons and families of low or moderate income, on the condition that...the purchasing agency shall cause the property to be used for low and moderate income rental or owner-occupied housing.” Government Code section 54237(d) (emphasis added) Under Government Code section 54238, if the RDA and/or Authority did not satisfy that obligation, it would become subject to legal action and could be required to remit funds to the State. Therefore, the subject \$8 million is properly considered “housing assets” within meaning of HSC section 34176(e)(2) because (i) the subject \$8 million are encumbered by an enforceable obligation to carry out the RDA and/or Authority’s preexisting statutory obligation under the Government Code as well as (ii) its contractual obligations under the PSA, the Development Agreement and the Grant Deed.

DETAIL OF REQUEST – ITEM NO. 5

A. Summary of Disputed Issue(s) (*Must be specific.*)

From Department’s letter dated August 30, 2012 to City of Santa Clara:

“Exhibit C, Item 5 – The First Time Homebuyer Financing Program is based upon contracts with the City and not the successor agency. Therefore, the \$5.4 million line item is not an enforceable obligation and is not an encumbrance housing asset.”

B. Background/History (*Provide relevant background/history, if applicable.*)

The history of the subject \$5.4 million is as follows:

- Pursuant to Health and Safety Code Section 33334.2(g), the RDA and the City have, by Resolutions No. 93-01 and 5785, respectively, established a First-Time Homebuyers Financing Program (“**FTHB Program**”) pursuant to which the RDA shall provide deferred subordinate mortgage loans to eligible low- and moderate-income households to assist such households in the purchase of homes in the City.
- The RDA and/or the Authority allocated funds each year, including in years 2011 and 2012, to support the FTHB Program.
- On July 18, 2006, the RDA and Neighborhood Housing Services Silicon Valley, Inc., a non-profit corporation (“**NHSSV**”) entered into an Amended and Restated

Operating Agreement Redevelopment Agency of the City of the Santa Clara First-Time Homebuyers Financing Program (“**NHSSV FTHB Agreement**”) establishing the obligations of the parties therein to support the FTHB Program.

- On April 3, 2007, the RDA and Washington Mutual Home Loans (“**WAMU**” and collectively with NHSSV referred to herein as “**Lenders**”) entered into a Operating Agreement Redevelopment Agency of the City of the Santa Clara First-Time Homebuyers Financing Program (“**WAMU FTHB Agreement**” and collectively with the NHSSV FTHB Agreement referred to herein as the “**FTHB Agreements**”) establishing the obligations of the parties therein to support the FTHB Program.
- On June 27, 2011, the Governor signed ABx1 26 (“**Dissolution Act**”).
- On June 27, 2012, the Dissolution Act was amended when the Governor signed AB 1484.

C. Justification (*Provide additional attachments to this form, as necessary.*)

The subject \$5.4 million is a “housing asset” within the meaning of HSC section 34167(e)(2) because the subject \$5.4 million is subject to validly existing “enforceable obligations” within the meaning of HSC sections 34167(d)(5) and 34171(d)(1)(E).

Here, the FTHB Agreements are legally binding agreements between the RDA and the Lenders. Pursuant to Section 3.1 of the FTHB Agreements, entitled Commitment by the Agency, the RDA is obligated to “make available an annual allocation of funds to provide Agency Loans for Homebuyers under the terms and conditions set forth in [the] Agreement.” The RDA is obligated to make available an annual allocation of funds to make loans. This obligation is enforceable against the RDA by the Lenders. Pursuant to Section 7.4(b) of the FTHB Agreement, entitled Remedies for Agency Default, the Lenders, respectively, “may take whatever other action at law or in equity it deems necessary or desirable to collect the amounts then due and thereafter to become due under this Agreement or to enforce performance and observance of any obligation, agreement or covenant of the Agency under this Agreement.”

Thus, in order for the RDA to meet its annual allocation obligation under the FTHB Agreements, the subject \$5.4 million are properly restricted and should be characterized as “housing assets” within the meaning of HSC section 34176(e)(2).

DETAIL OF REQUEST – ITEM NO. 6

A. Summary of Disputed Issue(s) (*Must be specific.*)

From Department’s letter dated August 30, 2012 to City of Santa Clara:

“Exhibit D, Items 252 through 265 – First Time Homebuyer loans totaling \$1.1 million were entered into after June 27, 2011 and are not enforceable obligations. HSC section 34163(b) prohibits a redevelopment agency from entering into a contract with any entity after June 27, 2011.”

B. Background/History (*Provide relevant background/history, if applicable.*)

The history of the subject \$1.1 million in RDA Loans is as follows:

- Pursuant to Health and Safety Code Section 33334.2(g), the RDA and the City have, by Resolutions No. 93-01 and 5785, respectively, established a First-Time Homebuyers Financing Program (“**FTHB Program**”) pursuant to which the RDA shall provide deferred subordinate mortgage loans (“**RDA Loans**”) to eligible low- and moderate-income households to assist such households in the purchase of homes in the City.
- The RDA and/or the Authority allocated funds each year, including in years 2011 and 2012, to support the FTHB Program.
- On July 18, 2006, the RDA and Neighborhood Housing Services Silicon Valley, Inc., a non-profit corporation (“**NHSSV**”) entered into an Amended and Restated Operating Agreement Redevelopment Agency of the City of the Santa Clara First-Time Homebuyers Financing Program (“**NHSSV FTHB Agreement**”) establishing the obligations of the parties therein to support the FTHB Program.
- On April 3, 2007, the RDA and Washington Mutual Home Loans (“**WAMU**” and collectively with NHSSV referred to herein as “**Lenders**”) entered into a Operating Agreement Redevelopment Agency of the City of the Santa Clara First-Time Homebuyers Financing Program (“**WAMU FTHB Agreement**” and collectively with the NHSSV FTHB Agreement referred to herein as the “**FTHB Agreements**”) establishing the obligations of the parties therein to support the FTHB Program.
- On June 27, 2011, the Governor signed ABx1 26 (“**Dissolution Act**”).
- Between November 16, 2011 and July 12, 2012, the Authority committed the subject \$1.1 million in RDA Loans to various third parties.
- On June 27, 2012, the Dissolution Act was amended when the Governor signed AB 1484.

C. Justification (*Provide additional attachments to this form, as necessary.*)

The subject \$1.1 million in RDA Loans is a “housing asset” within the meaning of HSC section 34167(e)(2) because the subject \$1.1 million in RDA Loans were made in accordance with certain FTHB Agreements which are, themselves, validly existing “enforceable obligations” for the reasons described in Item No. 5C, above.