



December 18, 2012

Mr. Greg Franklin, Director of Administrative Services
City of Yucaipa
34272 Yucaipa Boulevard
Yucaipa, CA 92399

Dear Mr. Franklin:

Subject: Recognized Obligation Payment Schedule

This letter supersedes Finance's Recognized Obligation Payment Schedule (ROPS) letter dated October 12, 2012. Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of Yucaipa Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule (ROPS III) to the California Department of Finance (Finance) on August 28, 2012 for the period of January 1 through June 30, 2013. Finance issued its determination related to those enforceable obligations on October 12, 2012. 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 29, 2012.

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 item being disputed.

- Item No. 12 – Administrative costs in the amount of \$25,000 funded with Low and Moderate Income Housing Fund (LMIHF). Finance continues to deny the item. Finance denied the item as HSC 4176 (a) (1) directs all rights, powers, duties, obligations to be transferred to the agency assuming the housing functions. The Agency contends the item is an enforceable obligation because the item was approved in a previous ROPS. Finance's determination is effective for a six-month 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 questioned on a preceding ROPS. Furthermore, upon the transfer of the former redevelopment agency's (RDA) housing functions to the new housing entity, HSC section 34176 requires that "all rights, powers, duties, obligations and housing assets...shall be transferred" to the new housing entity. This transfer of "duties and obligations" necessarily includes the transfer of statutory obligations; to the extent any continue to be applicable. To conclude that such costs should be on-going enforceable obligations of the successor agency could require a transfer of tax increment for life – directly contrary to the wind down directive in ABx1-26/AB1484. Additionally, the use of the LMIHF is restricted to encumbered balances and there were no contracts in place prior to June 27, 2011, encumbering LMIHF. Therefore, the administrative costs associated with the housing functions are not enforceable obligations.

- Item Nos. 16 and 24 through 30 – Uptown Streetscape Project expenses totaling \$1.72 million bond funds. Finance no longer objects to Item 16, but continues to deny Items 24 through 30 at this time. Finance denied the items 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. Additionally, the RDA must be a party to contracts and responsible for the payment of contracts between the RDA and a third party. Upon receiving a Finding of Completion from Finance, HSC section 34191.4 (b) may cause these items to be enforceable in future ROPS periods. The Agency contends Item 16 is an enforceable obligation because it represents the final retention payment to Hillcrest Construction; the construction contract was approved on March 7, 2011. Finance agrees that Item 16 is an enforceable obligation. There are no contracts in place for the remaining items; the items are not eligible for bond funding at this time. However, successor agencies will be eligible to expend bonds issued prior to January 1, 2011, once a finding of completion is received per 34191.4 (c). Those obligations should be reported on a subsequent ROPS.
- Item Nos. 22 and 23 – Sorenson owner participation agreements (OPA) for future construction in the amounts of \$752,700 funded by Redevelopment Property Tax Trust Fund (RPTTF) and \$1 million bond funds. Finance continues to deny the items at this time. While the OPA between the RDA and Sorenson Engineering, Inc. is valid, Finance denied the items as construction contracts were not executed prior to June 28, 2011, and therefore these items are not enforceable obligations. Pursuant to HSC section 34191.4 (c), this shall remain the case with respect to the bond funded portion (Item No. 23) until and unless a Finding of Completion is issued by Finance, at which time Item 23 may be considered an enforceable obligation. The Agency contends the items are enforceable obligations because the OPA is an enforceable obligation; therefore, any additional agreements necessary to fulfill the obligations set forth in the OPA must also be treated as enforceable obligations. The Agency does not have the capacity to construct the improvements itself, and thus must contract with qualified construction companies to fulfill its obligations under the OPA. However, Section 615 of the OPA states that in the event the former RDA has not let a contract for construction of the Agency Public Improvements by the time for the filing of the initial Operator Certificate, the Operator shall be exonerated from its obligations. The Operator Certificate was to be submitted by the end of August 2012 and the Agency had not let a contract for construction by that time, thereby exonerating the Operator from its obligations. If one party of the agreement is exonerated from performing there is no obligation for the other party to continue performing under the agreement. Therefore, the items are not enforceable obligations. However, to the extent the items were to be funded with bond proceeds, successor agencies will be eligible to expend bonds issued prior to January 1, 2011, once a finding of completion is received per 34191.4 (c). Those obligations should be reported on a subsequent ROPS.

In addition, per Finance's ROPS letter dated October 12, 2012, the following items not disputed by the Agency continue to be denied:

- Item No. 11 – Façade improvement agreements in the amount of \$60,000 paid with reserve balance. HSC section 34163 (b) prohibits a redevelopment agency (RDA) from entering into a contract with any entity after June 27, 2011. Because the agreements with business owners for façade improvements were granted/approved in December 2011, this line item is not an enforceable obligation.

- The following items were reclassified as administrative costs: Item Nos. 6 through 10. Although this reclassification increased administrative costs to \$189,110, the administrative cost allowance has not been exceeded.

The Agency's maximum approved RPTTF distribution for the reporting period is \$477,503 as summarized below:

| Approved RPTTF Distribution Amount For the period of January through June 2013 | |
|---|-------------------|
| Total RPTTF funding requested for obligations | \$ 586,000 |
| Less: Six-month total for items denied or reclassified as administrative cost | |
| Item 6* | 3,750 |
| Item 7* | 6,000 |
| Item 8* | 30,000 |
| Item 9* | 19,360 |
| Item 10* | 5,000 |
| Item 22 | 233,497 |
| Total approved RPTTF for enforceable obligations | \$ 288,393 |
| Plus: Allowable RPTTF distribution for administrative cost for ROPS III | 189,110 |
| Total RPTTF approved: | \$ 477,503 |

*Reclassified as administrative cost

Pursuant to HSC section 34186 (a), successor agencies were required to report on the ROPS III form the estimated obligations and actual payments associated with the January through June 2012 period. The amount of RPTTF approved in the above table will be adjusted by the county auditor-controller to account for differences between actual payments and past estimated obligations. Additionally, these estimates and accounts are subject to audit by the county auditor-controller and the State Controller.

The amount available from the RPTTF is the same as the 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.

Except for items disallowed as noted above, Finance is not objecting to the remaining items listed in your ROPS III. Obligations deemed not to be enforceable shall be removed from your ROPS. This is Finance's final determination related to the enforceable obligations reported on your ROPS for January 1 through June 30, 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 questioned on this ROPS or a preceding ROPS.

Mr. Greg Franklin
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Please direct inquiries to Evelyn Suess, Dispute Resolution Supervisor, or Mary Halterman, Analyst, at (916) 445-1546.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Szalay', with a long horizontal stroke extending to the left.

STEVE SZALAY
Local Government Consultant

cc: Mr. Dustin Gray, Accounting Manager, City of Yucaipa
Ms. Vanessa Doyle, Auditor Controller Manager, San Bernardino County
California State Controller's Office