



December 18, 2012

Mr. Jim Vanderpool, City Manager
City of Buena Park
6650 Beach Boulevard
Buena Park, CA 90621

Dear Mr. Vanderpool:

Subject: Recognized Obligation Payment Schedule

This letter supersedes Finance's Recognized Obligation Payment Schedule (ROPS) letter dated October 14, 2012. Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of Buena Park Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule (ROPS III) to the California Department of Finance (Finance) on August 30, 2012 for the period of January 1 through June 30, 2013. Finance issued its determination related to those enforceable obligations on October 14, 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. 33 – CDW Developer Disposition Agreement (DDA) in the amount of \$72.8 million. Finance no longer objects to the item. Finance denied the item as the agreement between the Redevelopment Agency (RDA) and CDW was signed on February 14, 2006; however, the funding source for the DDA is reported as 65 percent of the sales and use revenue generated by the developer. The Agency contends the item is an enforceable obligation because the Participation Agreement clearly states that the sales and use tax is a measurement tool to calculate the amount of tax increment the RDA provides to CDW. The agreement states that the "Specified Amount due CDW-C under this Agreement shall be paid by the Agency in arrears, on a quarterly basis, within thirty (30) days after the City's receipt of substantially all of its share of such Sales Tax Revenues for the applicable quarter." The Specified Amount is defined as "an amount equal to sixty-five percent (65%) of the Sales Tax Revenue for the quarter." In other words, the Agency is to make the payments to CDW and the payments are to be calculated using the amount of sales tax revenue paid by CDW to the City. This is a legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy as allowed per HSC section 34171 (d) (1) (E). Therefore, the item is an enforceable obligation. However, Finance will be re-reviewing the Agency's fiscal obligation under the agreement. This is due to the fact that at this time Finance is unable to discern what the appropriate obligation is to be borne by the Agency.

- Items Nos. 35 and 44 – The Source DDA and related legal services in the amount of \$59.2 million RPTTF funding. Finance no longer objects to the items; however, Item 44 has been reclassified as an administrative cost. Finance denied the items as the construction contract is dated June 20, 2012, and HSC section 341639 (b) prohibits a RDA from entering into a contract with any entity after June 27, 2011. The Agency contends the items are enforceable obligations because the governing document is the DDA, which was entered into by the Developer and RDA on October 26, 2010, and the construction contract dated June 20, 2012, is between the Developer and their contractor – not the RDA. For Item 35, Section 4 of the DDA states that “the Agency shall pay the Sales Tax Amount and the Property Tax Amount...at the times, in the amounts and subject to the conditions set forth.” This is a legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy as allowed per HSC section 34171 (d) (1) (E). Therefore, Item 35 is an enforceable obligation. However, Finance will be re-reviewing the Agency’s fiscal obligation under the agreement. This is due to the fact that at this time Finance is unable to discern what the appropriate obligation is to be borne by the Agency. Item 44 is related to legal costs associated with the contract, which does not fall into the exception in HSC section 34171 (b) that allows litigation expenses related to assets or obligations to be funded with property tax outside the administrative cap. Therefore, Item 44 has been reclassified as an administrative cost.
- Item No. 37 – Property Tax Administration in the amount of \$5,000. Finance no longer objects to the item; however, Finance reclassifies the item as an administrative cost. Finance denied the item as HSC section 34182(e) allows the county auditor-controller to deduct from the Redevelopment Property Tax Trust Fund (RPTTF) for their administration costs prior to distributing property tax increment funds. The Agency contends the item is an enforceable obligation because the services of HdL Companies, Property and Sales Tax Consultants, are to provide sales and property tax information to calculate the payments to Developers based on property and sales taxes their projects generate. The costs of the services are related to the former RDA Agreements that have assistance payments over a number of years made to developers based on a measurement tool of the sales taxes and property taxes generated from the project. However, the costs do not fall into any of the categories that are specifically excluded from the administrative cap as defined by HSC section 34171 (b). Therefore, the item is reclassified as an administrative cost.
- Items Nos. 64 through 66 – Property Demolitions in the amount of \$2.0 million RPTTF funding. Finance continues to deny the items. Finance denied the items as HSC section 34163 (b) prohibits a RDA from entering into a contract with any entity after June 27, 2011, and the items did not have valid contracts executed prior to June 28, 2011. Furthermore, HSC section 34176 (a) (1) states that if a city elects to retain the authority to perform housing functions, all rights, powers, duties and obligations shall be transferred to the city. Because many of the properties slated for demolition have been transferred to the City of Buena Park Housing Authority (Housing Authority), these properties are no longer the responsibility of the Agency. The Agency contends the items are enforceable obligations because approximately \$1,106,484 is for non-housing Successor Agency assets. However, there are no contracts in place and HSC section 34163 (b) prohibits a RDA from entering into a contract with any entity after June 27, 2011. Therefore, these items are not considered enforceable obligations.

- Items Nos. 81, 84 and 87 – Property maintenance and repairs in the amount of \$198,000 RPTTF funding. Finance no longer objects to the \$118,620 for the items, but continues to deny \$79,380 for the items. Finance denied the items as HSC section 34176 (a) (1) states that if a city elects to retain the housing assets and functions, all rights, powers, duties and obligations shall be transferred to the city. Because many of the properties receiving maintenance and repairs have been transferred to the Housing Authority, these properties are no longer the responsibility of the Agency. The Agency contends the items are enforceable obligations because the Successor Agency is required to maintain its assets until it is able to dispose of them and approximately \$118,620 is for non-housing Successor Agency assets. The Agency provided further information separating the costs between housing assets and non-housing assets. The costs to maintain assets prior to disposition are enforceable obligations under HSC section 34171 (d) (1) (F); therefore, \$118,620 of Items 81, 84, and 87 is an enforceable obligation. However, HSC section 34176 (a) (1) states that if a city elects to retain the housing assets and functions, all rights, powers, duties and obligations shall be transferred to the city. Therefore, \$79,380 of Items 81, 84, and 87 is not considered an enforceable obligation.

In addition, per Finance's ROPS letter dated October 14, 2012, the following items not disputed by the Agency continue to be denied:

- Item No. 23 –Jonathan Lehrer-Graiwer judgment in the amount of \$104 million. The judgment is not an enforceable obligation. The requirement to set aside 20 percent of redevelopment agency (RDA) tax increment for low and moderate income housing purposes ended with the passing of the redevelopment dissolution legislation. Because there no longer are such taxes allocated to the Agency, there is no payment obligation. Therefore, this item is not eligible for RPTTF funding.
- Item No. 46 – ABX1 26 Administration in the amount of \$20,923. HSC section 34182(e) allows the county auditor-controller to deduct from the RPTTF for their administration costs prior to distributing property tax increment funds. Therefore, the item is not eligible for RPTTF funding.
- Although Item No. 56 – Office Equipment Maintenance in the amount of \$80 was reclassified as an administrative cost, the administrative cost allowance has not been exceeded.

The Agency's maximum approved RPTTF distribution for the reporting period is: \$8,816,516 as summarized in the following table:

Approved RPTTF Distribution Amount For the period of January through June 2013	
Total RPTTF funding requested for obligations	\$ 11,843,728
Less: Six-month total for items denied or reclassified as administrative cost	
Item 23	2,751,279
Item 37*	2,500
Item 44*	6,000
Item 46	20,923
Item 56*	80
Item 64	0
Item 65	332,758
Item 66	12,632
Item 81	7,440
Item 84	2,250
Item 87	30,000
Total approved RPTTF for enforceable obligations	<u>\$ 8,677,866</u>
Plus: Allowable RPTTF distribution for administrative cost for ROPS III	<u>138,650</u>
Total RPTTF approved:	\$ 8,816,516

* 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.

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

Sincerely,



Steve Szalay
Local Government Consultant

cc: Mr. Scott Riordan, Project Manager, City of Buena Park
Mr. Frank Davies, Property Tax Manager, Orange County
California State Controller's Office