



December 18, 2012

Ms. Paula Chamberlain
Finance Director
City of Pomona
505 South Garey Avenue
Pomona, CA 91766

Dear Ms. Chamberlain:

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 Pomona 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 5, 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 items being disputed.

- Item No. 30, 31, 42, and 69 – Target Center in the amount of \$2 million, Phillips Ranch Entrance Monument in the amount of \$40,000, and the Neighborhood Improvement Program in the amount of \$73,329. Finance continues to deny Items 30 and 31 at this time and Finance continues to deny Items 42 and 69. Finance denied the items as HSC section 34163 (b) prohibits a redevelopment agency (RDA) from entering into a contract with any entity after June 27, 2011. It is our understanding that contracts for these line items were awarded after June 27, 2011. Therefore, these line items are not enforceable obligations and not eligible for funding.

The Agency contends Items 30 and 31 are enforceable obligations because on June 20, 2011, the former RDA approved a Disposition and Development Agreement (DDA) with Lewis Land Developers, LLC for the development of a Target Center Project at the former Auto Center site, and the execution of the agreement on June 29, 2011 was a ministerial act. Even with an effective date of June 20, 2011, the Agency does not have the ability to act under the DDA since they are required to sell property to the developer and enter into contracts to relocate the storm drain and complete public improvements. Per HSC section 34163 (b) "an agency shall not have the authority to...enter into contracts", and HSC section 34163 (d) states "an agency shall not have the authority

to...dispose of assets by sale...for any purpose." Therefore, 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 from Finance per 34191.4 (c). Those obligations should be reported on a subsequent ROPS.

The Agency contends Item 42 is an enforceable obligation because the developer has agreed with the Agency to split the cost of replacing an entrance monument sign (approximately \$40,000) at the entrance of the Phillips Ranch of Pomona, thus creating an enforceable obligation of the former RDA. However, there were no contracts in place prior to June 27, 2011. Therefore, the item is not an enforceable obligation.

The Agency contends Item 69 is an enforceable obligation because the two remaining applicants requesting funding for lead testing and rehabilitation work (Jennings for \$67,409 and Timpane for \$73,329) were approved prior the elimination of RDAs. However, the agreements were entered into on June 30, 2011. Therefore, the items are not enforceable obligations.

- Items Nos. 43 through 45 totaling \$1.1 million are for lawsuits that remain pending and the legal settlement amount has not been determined. Finance no longer objects to Item 44; however, Finance continues to deny Items 43 and 45. Finance denied the items as HSC section 34171 (d) does not recognize contingent or unknown obligations, thus creation of reserves for a pending legal settlement through a Recognized Obligations Payment Schedule is not permitted. Until these items are settled by a competent court of law pursuant to HSC section 34171 (d) (1) (D), they are not enforceable and not eligible for funding. The Agency acknowledges Items 43 and 45 should not appear on the ROPS as they are currently estimates. However, the Agency contends Item 44 is an enforceable obligation because it is for current legal and expert witness expenses necessary in order to defend the case and protect the interest of the Agency. HSC section 34171 (b) allows litigation expenses related to assets or obligations to be funded with property tax outside the administrative cap. Therefore, Item 44 is an enforceable obligation.
- Although enforceable, Items Nos. 40, 41, 49, and 50 are considered administrative costs and have been reclassified. Finance continues to reclassify the items as administrative costs. The Agency contends the items are enforceable obligations per section 34177.3 (b), which states successor agencies may create enforceable obligations to conduct the work of winding down the RDA, including hiring staff, acquiring necessary professional administrative services and legal counsel. Finance agrees that these costs are enforceable obligations; however, they are to be funded from the administrative allowance. HSC section 34177 (l) states that for each recognized obligation on a ROPS, the Agency must designate one or more payment sources, including subsection (D) administrative cost allowance and subsection (E) Redevelopment Property Tax Trust Fund (RPTTF). The items do not fall into any of the following categories that are specifically excluded from the administrative cap as defined by HSC section 34171 (b):
 - Any litigation expenses related to assets or obligations.
 - Settlements and judgments.
 - The costs of maintaining assets prior to disposition.
 - Employee costs associated with work on specific project implementation activities, including, but not limited to, construction inspection, project management, or actual construction, shall be considered project-specific costs.

Therefore, the items are reclassified as administrative costs.

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

- Item No. 73—City advances and loans. 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, unless issued within two years of the RDA's creation date or for issuance of indebtedness to third-party investors or bondholders. Therefore, this item is not an enforceable obligation at this time. Upon receiving a Finding of Completion from Finance, HSC section 34191.4 (b) may cause these items to be enforceable in future ROPS periods.
- Item No. 74 – SB211 Pass-through payments totaling \$417,908. HSC section 34183 (a) (1) states that the County Auditor Controller shall make the required pass-through payments to the taxing entities. Therefore, this line item is not an enforceable obligation and not eligible for funding.

The Agency's maximum approved Redevelopment Property Tax Trust Fund (RPTTF) distribution for the reporting period is: \$11,576,659 as summarized below:

Approved RPTTF Distribution Amount	
For the period of January through June 2013	
Total RPTTF funding requested for obligations	\$ 12,406,376
Less: Six-month total for item(s) denied or reclassified* as administrative cost	
Item 40	64,800 *
Item 41	30,000 *
Item 42	20,000
Item 43	472,560
Item 45	0
Item 49	3,051 *
Item 50	1,490 *
Item 69	73,329
Item 73	0
Item 74	417,908
Total approved RPTTF for enforceable obligations	<u>\$ 11,323,238</u>
Plus: Allowable RPTTF distribution for administrative cost for ROPS III	<u>253,421</u>
Total RPTTF approved:	\$ 11,576,659

*Reclassified to Administrative Costs

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.

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

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Ms. Poliakon, Senior Accountant, City of Pomona
Ms. Burns, Manager, Los Angeles County Auditor-Controller's Office
California State Controller's Office