



December 18, 2012

Ms. Laura Rocha, Finance Director  
City of San Marcos  
1 Civic Center Drive  
San Marcos, CA 92069

Dear Ms. Rocha:

Subject: Recognized Obligation Payment Schedule

This letter supersedes Finance's Recognized Obligation Payment Schedule (ROPS) letter dated October 10, 2012. Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of San Marcos Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule (ROPS III) to the California Department of Finance (Finance) on August 27, 2012 for the period of January 1 through June 30, 2013. Finance issued its determination related to those enforceable obligations on October 10, 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 28, 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.

- Items Nos. 4, 5, 6, 29, 30, and 31 – 2001 Revenue Bonds in the amount of \$66.3 million and related Trustee Fess in the amount of \$57,580. Finance will not object to these items at this time. Finance is unable to discern the Agency's appropriate share/obligation of the costs at this time; therefore, Finance will be reviewing the Agency's fiscal obligation under the debt issuance in the next ROPS period.
- Items Nos. 44, 45, 46, and 47 – ERAF and SERAF loan payments in the amount of \$24.7 million. Finance continues to deny the items at this time. Finance denied the items as HSC section 34176 (e) (6) (B) states that loan repayments shall not be made prior to the 2013-14 fiscal year. The Agency contends the items are enforceable obligations because the amounts listed are for interest payments, which are not exclusively barred by HSC 34176 (e) (6) (B). It is Finance's position that no payments for ERAF and SERAF shall be made until the 2013-14 fiscal year. Therefore, the items are currently not enforceable obligations and not eligible for funding at this time.
- Items Nos. 68, 69, and 70 – Various improvement projects in the amount of \$2.6 million in bond proceeds. Finance continues to deny the items at this time. Finance denied the items as the Agency did not provide documents to establish the items as enforceable obligations. The Agency contends these items are enforceable obligations because they are for the match portion of a Federal grant; however, the grant documents provided show the grant was issued to the City of San Marcos (City) and the former redevelopment agency (RDA) was not a party to that grant. In addition, the contracts

are between the City and third parties, not the former RDA. 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 per 34191.4 (c). Those obligations should be reported on a subsequent ROPS.

- Items Nos. 75, 76, 78, 85, and 96 – Various projects in the amount of \$7.4 million. Finance continues to deny the items at this time. Finance denied the items as HSC section 34163 (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 contracts are in furtherance of a Memorandum of Understanding. However, the contracts provided are between the City and third parties, some of which were entered into after June 27, 2011. 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 per 34191.4 (c). Those obligations should be reported on a subsequent ROPS.
- Item No. 101 – Residences at Creekside DDA in the amount of \$11.9 million. Finance continues to deny the item. Finance denied the item as HSC section 34163 (b) prohibits the Agency from entering into a contract with any entity after June 27, 2011. The DDA was signed on June 28, 2011. The Agency contends it was in an Exclusive Negotiating Agreement (ENA) with a third party (Developer) prior to June 27, 2011, the Agency approved the project May 10, 2011, transferred property to the Developer May 31, 2011, and the Agency fully executed and delivered the DDA to the Developer prior to June 28, 2011, when it was signed by the Developer. The Agency also contends it took the appropriate measures to expend the housing bond proceeds in accordance with HSC section 34176 (g), which authorizes the commitment of housing bond proceeds.

Finance concurs that an ENA was entered into on June 9, 2010; however, Section 1 – Negotiating Period states “The Agency agrees to exclusively negotiate with Developer and Developer agrees to exclusively negotiate with the Agency regarding the terms of the DDA/OPA for a one hundred-eighty (180) day period from [June 9, 2010].” This means the DDA should have been signed by December 2010. Furthermore, Section 5 of the ENA states that “the Parties are not contractually bound to enter into a DDA/OPA.” It is Finance’s position the DDA was not enforceable until it was signed by all parties, including the Developer, on June 28, 2011.

The housing successor can follow the process set forth in HSC section 34176 (g), which authorizes the housing successor to designate the use of and commit bond proceeds that remain after the satisfaction of enforceable obligations that have been approved in a ROPS and that are consistent with the bond covenants. The proceeds must have been derived from bonds that were issued for the purposes of affordable housing and issued prior to January 1, 2011. To initiate this process, the housing successor is required to provide notice to the successor agency of any designations of use or commitments of funds that it wishes to make at least 20 days before the deadline for submission of the ROPS to the Oversight Board. These commitments and designations will not be considered valid or binding until they are included in and approved in a valid ROPS. The Agency provided a Resolution dated December 7, 2012. This does not meet the requirement to provide notice to the Agency of any designations of use or commitments of funds that it wishes to make at least 20 days before the deadline for submission of the ROPS to the Oversight Board. Therefore, the item is 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.

- Items Nos. 104, 105, and 106 – Contracts for consulting services in the amount of \$154,000. Finance continues to deny the items. Finance denied the items as they are identified as obligations of the successor housing entity. The Agency contends these are costs to maintain assets as per HSC section 34177 (d) (1) (C). Finance reviewed the documents and determined the contracts are between the City and third parties. The former RDA is not a party to the contracts. Therefore, these items are not enforceable obligations and not eligible for RPTTF funding.
- Item No. 108 - Contract for consulting services in the amount of \$4,037. Finance continues to deny the item. Finance denied the item per HSC section 34176 (a) (2). The Agency contends these costs are required to support or maintain housing assets retained by the Agency as per HSC section 34177 (d) (1) (C). Finance determined these costs are ongoing costs and are subject to HSC section 34176 (a) (2) which states if a city, county, or city and county elects to retain the authority to perform housing functions previously performed by a RDA, all rights, powers, duties, obligations, and housing assets shall be transferred to the city, county, or city and county. In addition, to claim such costs are the ongoing obligation of the Agency is in direct conflict with expeditiously winding down the former RDA. Therefore, the item is not an enforceable obligation.
- Item No. 109 – Mobile Home Rent Review in the amount of \$60,000. Finance continues to deny the item. Finance denied the item per section HSC section 34176 (a) (2). The Agency contends these costs are required to support or maintain housing assets retained by the Agency as per HSC section 34177 (d) (1) (C); however, the Agency did not provide contracts for this amount listed on the ROPS for payment to “Various.” Finance determined these costs are ongoing costs and are subject to HSC section 34176 (a) (2) which states if a city, county, or city and county elects to retain the authority to perform housing functions previously performed by a RDA, all rights, powers, duties, obligations, and housing assets shall be transferred to the city, county, or city and county. In addition, to claim such costs are the ongoing obligation of the Agency is in direct conflict with expeditiously winding down the former RDA. Therefore, the item is not an enforceable obligation.
- Item No. 110 – Leitch-Grab-Papineau Judgment in the amount of \$25.4 million. Finance continues to deny the item. The Agency contends the obligation is to fund a designated amount of low to moderate income housing to remedy past actions, not to set aside a percentage of future revenue. However, the judgment does to appear to place any requirements on the Agency to construct. It only requires the Agency to enter into regulatory agreements and possibly amend the Participation Agreement. The Agency did not provide enough information to determine what, if anything, is owed under the agreements. Furthermore, the Agency asserts that they have been out of compliance since 2004. However, the agreement itself requires compliance to be returned within one year and the penalty for not doing so is to not assist in any new development. ABx1 26 and AB 1484 already prohibit the Agency from engaging in any new development. Therefore, this item is not an enforceable obligation and not eligible for RPTTF funds.
- Administrative costs funded by RPTTF exceed the allowance by \$259,037. HSC section 34171 (b) limits administrative costs to three percent of property tax allocated to the Agency or \$250,000, whichever is greater. Three percent of the property tax allocated in fiscal year 2012-13 is \$535,489. Therefore, \$259,037 of the claimed \$794,526 is not an enforceable obligation.

The Agency's maximum approved Redevelopment Property Tax Trust Fund (RPTTF) distribution for the reporting period is: \$12,315,532 as summarized below:

<b>Approved RPTTF Distribution Amount</b>	
<b>For the period of January through June 2013</b>	
Total RPTTF funding requested for obligations	\$ 14,153,582
Less: Six-month total for item(s) denied or reclassified as administrative cost	
Item 44	49,500
Item 45	63,947
Item 46	49,069
Item 47	130,821
Item 104	4,375
Item 105	45,000
Item 106	17,668
Item 108	1,835
Item 109	30,000
Item 110	231,000
Total approved RPTTF for enforceable obligations	<u>\$ 13,530,367</u>
Plus: Allowable RPTTF distribution for administrative cost for ROPS III	535,489
<b>Total RPTTF approved:</b>	<b>\$ 14,065,856</b>
<b>Administrative Cost Calculation</b>	
Total RPTTF for the period July through December 2012	\$ 4,319,257
Total RPTTF for the period January through June 2013	13,530,367
<b>Total RPTTF for fiscal year 2012-13:</b>	<b>\$ 17,849,624</b>
Allowable administrative cost for fiscal year 2012-13 (Greater of 3% or \$250,000)	535,489
Administrative allowance for the period of July through December 2012	0
<b>Allowable RPTTF distribution for administrative cost for ROPS III:</b>	<b>\$ 535,489</b>

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.

Ms. Laura Rocha  
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Please direct inquiries to Evelyn Suess, Dispute Resolution Supervisor, or Danielle Brandon, Analyst, at (916) 445-1546.

Sincerely,



**STEVE SZALAY**  
Local Government Consultant

cc: Ms. Lydia Romero, Deputy City Manager, City of San Marcos  
Mr. Juan Perez, Senior Auditor and Controller Manager, County of San Diego  
California State Controller's Office