



December 18, 2012

Mr. Mark Evanoff, Redevelopment Manager
City of Union City
34009 Alvarado-Niles Road
Union City, CA 94587

Dear Mr. Evanoff:

Subject: Recognized Obligation Payment Schedule

This letter supersedes Finance's Recognized Obligation Payment Schedule (ROPS) letter dated September 21, 2012. Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of Union City Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule (ROPS III) to the California Department of Finance (Finance) on August 8, 2012, for the period of January 1 through June 30, 2013. Finance issued its determination related to those enforceable obligations on September 21, 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 October 17, 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. 8 – East-West Connector for \$17 million of bond funds. Finance continues to deny the item. The Agency contends the item is an enforceable obligation because the Oversight Board approved the execution of an agreement between the City of Union City (City) and the Agency that amended and restated the amount of the former RDA's obligation for the local match. However, the grant was awarded to the City, not the former RDA. The actual payee for this item, per the Agency's position, is the City. However, HSC section 34171 (d) (2) states agreements, contracts, or arrangements between the city, county, or city and county that created the RDA and the former RDA are not enforceable obligations. Therefore, the item is not an enforceable obligation.

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. Although we note that pursuant to HSC section 34191.4 (c), successor agencies that have been issued a finding of completion by Finance will be allowed to use excess proceeds from bonds issued prior to December 31, 2010, for the purposes for which the bonds were issued. Successor Agencies are required to defease or repurchase on the open market for cancellation any bonds that cannot be used for the purpose they were issued or if they were issued after December 31, 2010.

While HSC section 34178 (a) and 34180 (h) authorizes successor agencies to enter or reenter into agreements, any agreement enter or reentered into cannot conflict with the requirements set forth in HSC 34171 (d), as ABx1 26 did not specifically carve out an exception to the definition of an enforceable obligation nor did HSC section 34178 (a) or 34180 (h) not withstand HSC section 34171 (d). Therefore, the Oversight Board had no legal basis to approve an action that directly conflicted with and violated the definition of an enforceable obligation. Even if Finance did not object to the specific Oversight Board actions authorizing the Agency to enter or reenter into agreements, the statute as a whole prohibits such an action from being validated if it conflicts with the definition of an enforceable obligation. Additionally, Finance has clearly defined authority under HSC section 34177 and 34179 (h) to review any items on ROPS to determine whether or not successor agencies are responsible for the obligation listed on their ROPS. Even if an Oversight Board approved an action that created an enforceable obligation, Finance has the authority to review the enforceable obligation for compliance with HSC section 34171 (d) or for compliance with any other statutory requirements contained in Chapter 26, statutes of 2012 (AB 1484). At no time can an Oversight Board action eliminate Finance's authority to review an enforceable obligation as part of a ROPS review.

- Item No. 9 – Tropics Rental Assistance Program in the amount of \$1.6 million. Finance continues to deny the item. Finance denied the item as the grant agreement was amended on June 28, 2011. HSC section 34163 (c) prohibits a RDA from amending or modifying existing agreements, obligations, or commitments with any entity for any purpose after June 27, 2011. Therefore, the item is not eligible for RPTTF funding. It is Finance's position that even though an agreement existed prior to June 27, 2011, the June 28, 2011 amendment changed the Agency's financial obligations; therefore, the item continues to be denied for the reasons previously stated.
- Item Nos. 11 through 13 – BART Phase 2 for \$17.9 million of bond funds. Finance continues to deny the items. Finance denied the items as documentation provided does not support the total obligations listed. During the meet and confer process, the Agency represented it was responsible for the entire amount of the contract if other funding sources do not materialize. While this explanation answers the amount discrepancy referenced in Finance's previous denial, Finance disagrees with this explanation. The introduction to the Cooperative Agreement lists the former RDA as "Agency" and the City as "City". Section 5.07 of the Cooperative Agreement states, "If the Agency ceases to exist, the City shall automatically succeed to the interests of Agency under this Agreement." As of February 1, 2012, the former RDA ceased to exist. It is Finance's position that the former RDA's obligations under this contract ended as of February 1, 2012. Therefore, this item is not an enforceable obligation eligible for bond funding.

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. Although we note that pursuant to HSC section 34191.4 (c), successor agencies that have been issued a finding of completion by Finance will be allowed to use excess proceeds from bonds issued prior to December 31, 2010, for the purposes for which the bonds were issued. Successor Agencies are required to defease or repurchase on the open market for cancellation any bonds that cannot be used for the purpose they were issued or if they were issued after December 31, 2010.

- Items Nos. 21 and 22 – Blight Removal in the amount of \$384,998. Finance continues to deny the items. Finance denied the items as documentation provided was not

sufficient to demonstrate that this item is an obligation of the former RDA. The contract provided is between the City and the vendor. The Agency contends the item is an enforceable obligation because the contract has been in place since March 7, 1997, with continual appropriations from the former RDA to the City to fund a non-profit organization. However, the actual payee for this item, per the Agency's position, is the City. As per HSC section 34171 (d) (2), agreements, contracts, or arrangements between the city, county, or city and county that created the RDA and the former RDA are not enforceable obligations. Therefore, the items are not enforceable obligation and not eligible for Redevelopment Property Tax Trust Fund (RPTTF) funding.

- Item No. 62 – Emergency Vehicle Access for MidPen for \$1.2 million of bond funds. Finance continues to deny the item. Finance denied the item as the contract was signed on July 18, 2011, and does not identify the RDA as a party to the contract. The Agency contends the item is an enforceable obligation because the item is in furtherance of a former RDA Development and Disposition Agreement amended April 15, 2010. However, the Agency is not a party to the contract for this item. Therefore, the item is not an enforceable obligation.

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. Although we note that pursuant to HSC section 34191.4 (c), successor agencies that have been issued a finding of completion by Finance will be allowed to use excess proceeds from bonds issued prior to December 31, 2010, for the purposes for which the bonds were issued. Successor Agencies are required to defease or repurchase on the open market for cancellation any bonds that cannot be used for the purpose they were issued or if they were issued after December 31, 2010.

In addition, per Finance's ROPS letter dated September 21, 2012, the following items continue to be denied and were not contested by the Agency:

January through June 2013 ROPS

- HSC section 34163 (b) prohibits a redevelopment agency (RDA) from entering into a contract with any entity after June 27, 2011. Therefore, the following items are not enforceable obligations:
 - Item Nos. 53 and 55 through 58 – Enforceable Obligations to Public Agencies for \$0. The grants executed for items 53 and 55 through 57 are with the City and not the former RDA. Additionally, the grant awarded to the RDA for item 58 was signed on January 24, 2012.
 - Item No. 61 – County Rehabilitation Grant Program for \$800,000 of bond funds. The Successor Agency approved \$800,000 bond funds for housing rehabilitation and new affordable housing construction projects on July 10, 2012. Furthermore, there were no third party contracts provided for the commitment of these funds.

July through December 2013 ROPS

Finance is not reviewing the ROPS for the ROPS IV at this point in time, and therefore we returned your ROPS IV. Please resubmit the ROPS IV for our review when the ROPS IV form becomes available.

The Agency's maximum approved RPTTF distribution for the reporting period is \$4,251,226 as summarized below:

Approved RPTTF Distribution Amount For the period of January through June 2013	
Total RPTTF funding requested for obligations	\$ 4,374,979
Less: Six-month total for item(s) denied or reclassified as administrative cost	
Item No. 9	200,000
Item No. 21	30,000
Item No. 22	25,002
Item No. 30*	30,000
Item No. 63*	12,000
Item No. 65*	3,500
Total approved RPTTF for enforceable obligations	<u>\$ 4,074,477</u>
Plus: Allowable RPTTF distribution for administrative cost for ROPS III	<u>176,749</u>
Total RPTTF approved:	\$ 4,251,226

* Reclassified as administrative cost

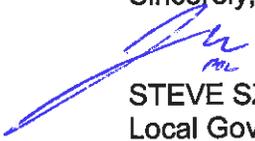
Pursuant to HSC section 34186 (a), successor agencies were required to report on the ROPS III form the estimated obligations and actual payments associated with the January through June 2012 period. The amount of RPTTF approved in the above table will be adjusted by the county auditor-controller to account 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.

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

Sincerely,


STEVE SZALAY
Local Government Consultant

cc: On following page

Mr. Mark Evanoff
December 18, 2012
Page 5

- cc. Mr. Rich Digre, Director of Administrative Services, Union City
Ms. Carol S. Orth, Tax Analysis Division Chief, Alameda County Auditor Controller
California State Controller' Office