

**HAYWARD SUCCESSOR AGENCY OVERSIGHT BOARD  
SPECIAL MEETING  
January 15, 2013  
777 B STREET  
CONFERENCE ROOM 2A  
12:30 PM**

**CALL TO ORDER**

**ROLL CALL**

**PLEDGE OF ALLEGIANCE**

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**PUBLIC COMMENTS:** *(The Public Comment section provides an opportunity to address the Oversight Board on items not listed on the agenda. The Board welcomes your comments and requests that speakers present their remarks in a respectful manner, within established time limits, and focus on issues which directly affect the Board or are within the jurisdiction of the Board. As the Board is prohibited by State law from discussing items not listed on the agenda, your item will be taken under consideration and may be referred to staff.)*

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1. Approval of October 12, 2012 Meeting Minutes
2. PUBLIC HEARING: Review of Due Diligence Review for the Low Moderate Income Housing Fund  
*Attachment (to be distributed Monday, January 14)*
3. Update on ROPS III Meet and Confer Session  
*Attachments*
4. Future Meeting Dates and Agenda Items  
Friday, January 25 at 12:30 p.m. – Approval of Housing Due Diligence Report

**BOARD MEMBER/STAFF ANNOUNCEMENTS AND REFERRALS**

**ADJOURNMENT**

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**NEXT MEETING – FRIDAY, JANUARY 25, 2013**

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*Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans Disabilities Act of 1990. Interested persons must request the accommodation at least 48 hours in advance of the meeting by contacting the Assistant City Manager at (510) 583-4300 or TDD (510) 247-3340.*

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**HAYWARD SUCCESSOR AGENCY  
OVERSIGHT BOARD  
October 12, 2012**

**SUMMARY NOTES**

**BOARD MEMBERS PRESENT:** Michael Sweeney; Jesus Armas; Richard Valle; Mark Salinas; Olden Henson; Sean Brooks

**BOARD MEMBERS ABSENT:** None

**STAFF:** Kelly McAdoo, Assistant City Manager; Maureen Conneely, Assistant City Attorney; Colleen Kamai, Executive Assistant

**PUBLIC:** Raphael Yaquian, Goldfarb Lipman Attorneys; Ruben Briones, Chief of Staff Supervisor Valle; Rhianna Williams, CSUEB; Jasmine Williams, CSUEB; Yousuf Fahimuddin, CSUEB; Marina Swanson, CSUEB; Andre Dupree, CSUEB; Anthony Beans, CSUEB; Denise Pena, CSUEB; Brianna Gabriel, CSUEB; Keely Wong, CSUEB

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**Call Meeting to Order:** Meeting called to order at 12:59 p.m.

**Roll Call:** Board members signed in.

**Pledge of Allegiance:** Those in attendance cited the Pledge of Allegiance.

**Public Comments:** A student from Cal State University East Bay said the group is attending the meeting as part of their Introduction to Journalism class.

**Approval of August 23, 2012 Meeting Summary Notes:** It was **motioned/seconded** (Henson/Salinas) and passed by majority vote to approve the meeting notes of August 23, 2012. **APPROVED** 5:0:0:1(vacancy 1)

**Approval of Modified Third Recognized Obligation Payment Schedule (ROPS) for January – June 2013:** Assistant City Manager Kelly McAdoo reviewed the recommended modifications as indicated in the staff report that is part of the meeting packet and answered Board member questions.

It was **motioned/seconded** (Armas/Salinas) and approved by majority vote to approve the staff report recommendations and to adopt the resolution amending Line Item 50 to reflect the increased cost for the Due Diligence Review, and Line Item 24 to update the vendor name for the annual Cinema Place Security alarm monitoring. **APPROVED** 6:0 (vacancy 1)

**Update on Oversight Board Legal Counsel Request for Proposals:** Assistant City Manager Kelly McAdoo asked the Board if they wanted to proceed with the process.

Seeing no objection from the Board, Chair Sweeney indicated it is not necessary at this time.

**Update on County Agreed Upon Procedures Review (Oral Report):** Assistant City Manager Kelly McAdoo reported that the County Agreed Upon Procedures is a County obligation, a remnant of AB 26 refined under AB 1484. Ms. McAdoo said that she had hoped the report would be ready in time for the meeting, but it was not and indicated she will provide an update when she receives the final report from the County.

**Future Meeting Dates and Agenda Items:** Two meetings will be scheduled five days apart to adopt the Housing Due Diligence Review; the first meeting the week of December 3 and the second meeting the week of December. Staff will initiate a poll to determine dates and times that work best for Board members. In addition, staff will schedule a tentative meeting November 26 or 27 to review the preliminary draft Housing Audit if it is ready.

Assistant City Manager Kelly McAdoo handed out information from Goldfarb Lipman Attorneys regarding upcoming elements and milestones in the redevelopment dissolution process.

**Board Member/Staff Announcements and Referrals:** Assistant City Manager Kelly McAdoo reported that the Department of Finance (DOF) did not contest the sale of the Residual Burbank School Site, staff did not receive any feedback from the DOF questioning the item; therefore, staff will proceed with the process.

Mayor Sweeney acknowledged Cal State University East Bay students in attendance.

Board Member Armas noted the Board has one vacant seat and urged staff to follow up with HARD on their appointment.

Board Member Salinas announced that there is a Mariachi Festival tonight in front of City Hall from 5:00pm to 9:00pm.

**Adjournment:** The meeting adjourned at 1:21 p.m.



## MEET AND CONFER REQUEST FORM

**Instructions:** Please fill out this form in its entirety to initiate a Meet and Confer session. Additional supporting documents may be included with the submittal of this form—as justification for the disputed item(s). Upon completion, email a PDF version of this document (including any attachments) to:

Redevelopment\_Administration@dof.ca.gov

The subject line should state “[Agency Name] Request to Meet and Confer”. Upon receipt and determination that the request is valid and complete, the Department of Finance (Finance) will contact the requesting agency within ten business days to schedule a date and time for the Meet and Confer session.

To be valid, all Meet and Confer requests must be specifically related to a determination made by Finance and submitted within the required statutory time frame. The requirements are as follows:

- **Housing Asset Transfer** Meet and Confer requests must be made within five business days of the date of Finance’s determination letter per HSC Section 34176 (a) (2).
- **Due Diligence Review** Meet and Confer requests must be made within five business days of the date of Finance’s determination letter, and no later than **November 16, 2012** for the Low and Moderate Income Housing Fund due diligence review per HSC Section 34179.6 (e).
- **Recognized Obligation Payment Schedule (ROPS)** Meet and Confer requests must be made within five business days of the date of Finance’s determination letter per HSC Section 34177 (m).

Agencies should become familiar with the Meet and Confer Guidelines located on Finance’s website. Failure to follow these guidelines could result in termination of the Meet and Confer session. Questions related to the Meet and Confer process should be directed to Finance’s Dispute Resolution Coordinator at (916) 445-1546 or by email to Redevelopment\_Administration@dof.ca.gov.

### AGENCY (SELECT ONE):

Successor Agency       Housing Entity

**AGENCY NAME: Hayward Successor Agency**

### TYPE OF MEET AND CONFER REQUESTED (SELECT ONE):

Housing Assets Transfers       Due Diligence Reviews       ROPS Period 12/13B

DATE OF FINANCE’S DETERMINATION LETTER: October 19, 2012

### REQUESTED FORMAT OF MEET AND CONFER SESSION (SELECT ONE):

Meeting at Finance       Conference Call

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**DETAIL OF REQUEST**

**A. Summary of Disputed Issue(s)** *(Must be specific.)*  
See Attachment

**B. Background/History** *(Provide relevant background/history, if applicable.)*  
See Attachment

**C. Justification** *(Provide additional attachments to this form, as necessary.)*  
See Attachment

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**Agency Contact Information**

Name:	Kelly McAdoo	Name:	
Title:	Assistant City Manager	Title:	
Phone:	(510) 583-4305	Phone:	
Email:	kelly.mcadoo@hayward-ca.gov	Email:	
Date:	October 24, 2012	Date:	

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**Department of Finance Local Government Unit Use Only**

REQUEST TO MEET AND CONFER DATE:  APPROVED  DENIED

REQUEST APPROVED/DENIED BY: \_\_\_\_\_ DATE: \_\_\_\_\_

MEET AND CONFER DATE/TIME/LOCATION: \_\_\_\_\_

MEET AND CONFER SESSION CONFIRMED:  YES DATE CONFIRMED: \_\_\_\_\_

DENIAL NOTICE PROVIDED:  YES DATE AGENCY NOTIFIED: \_\_\_\_\_

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Form DF-MC (Revised 9/10/12)

ATTACHMENT A**Hayward Successor Agency Meet and Confer Request Form Period 12/13B**

Thank you for your letter dated October 19, 2012, and your approval of the items listed on the Recognized Obligation Payment Schedule (“ROPS”) for the period ending June 30, 2013 (“Third ROPS”) (with the limited exception of certain items which are discussed in more detail below) submitted by the Hayward Successor Agency, a separate public entity (the “Successor Agency”), of the former Hayward Redevelopment Agency (the “Dissolved RDA”) pursuant to Health and Safety Code Section 34173. Please note that all references below are to the California Health and Safety Code.

**A. SUMMARY OF DISPUTED ISSUE(S)**

**Item No. 3 City Repayment Agreement:** The Successor Agency appreciates the DOF’s acknowledgement that upon receipt of a finding of completion under Section 34191.4(c), the repayment agreement will be deemed an enforceable obligation. The Successor Agency’s governing board has requested that staff continue to list the contract on the 3<sup>rd</sup> ROPS for record keeping purposes recognizing that no funds will be allowed to be used to repay that loan prior to the issuance of a finding of completion. At such time as the Successor Agency receives the finding of completion from the DOF, the Successor Agency will list the obligation on a future ROPS identifying the Redevelopment Property Tax Trust Fund (the “RPTTF”) as the source of repayment.

**Item No. 4 SERAF Repayment:** The Successor Agency appreciates the DOF’s acknowledgement that the SERAF repayment will be an enforceable obligation of the Successor Agency payable commencing in Fiscal Year 2013-14. The Successor Agency’s governing board has requested that staff continue to list the SERAF repayment obligation on the 3<sup>rd</sup> ROPS for record keeping purposes recognizing that no funds will be allowed to be used to repay that obligation prior to Fiscal Year 2013-14. The Successor Agency will list the obligation on a future ROPS identifying RPTTF as the source of repayment.

**Item No. 23 Contract for Security Services:** The Successor Agency respectfully disagrees with the DOF’s assertion that the contract for security services in the amount of \$68,000 is not an enforceable obligation. While the Successor Agency acknowledges that its purpose is to expeditiously wind down the affairs of the Dissolved RDA, the Successor Agency must do so in a manner that preserves the Dissolved RDA’s assets until they are disposed of. As discussed in Part B below, the Dissolved RDA funded the security services for the project to protect its investment in the project and to eliminate blight through the reduction in crime. As the DOF correctly points out, the Oversight Board may direct the Successor Agency to determine if any contracts between the Dissolved RDA and private parties may be terminated. The Oversight Board has considered the contracts for security services and has recognized the importance of continuing to provide security services for the project as prudent property management. While no contract requires the payment of security services by the Successor Agency, this payment can be classified as the costs of maintaining assets prior to disposition and thus an enforceable obligation under Section 34171(d)(1)(F). The Successor Agency respectfully requests that the DOF reconsider its position regarding the payment of the security services, as they are recommended under prudent management practices and constitute standard property carrying costs which are correctly classified as an enforceable obligation under Section 34171(d)(1)(F).

October 26, 2012

Page 1 of 4

Oversight Board Meeting  
January 15, 2013  
Page 7 of 14

**ATTACHMENT A****Hayward Successor Agency Meet and Confer Request Form Period 12/13B**

**Items No. 24 through 28 Cinema Place Maintenance Expenses:** The Successor Agency listed the amount necessary for the contracts for utilities and maintenance under Items No. 24 through 28 as \$99,200 because it had been the practice of the Dissolved RDA to fund the entire costs of the obligations and to be reimbursed pursuant to Section 4.03 of the Cinema Place Parking Maintenance and Easement Agreement, as correctly identified by the DOF. The Successor Agency confirms that the Successor Agency's combined obligation is \$49,600 and that only that amount will be funded through the RPTTF distribution under the Third ROPS. The Successor Agency intends to contact its counter party in the Cinema Place Parking Maintenance and Easement Agreement and require that 50% of the estimated costs be paid in advance so that the Successor Agency no longer has to fund the entire amount and wait to be reimbursed. This may necessitate an amendment to the Cinema Place Parking Maintenance and Easement Agreement, which the Successor Agency will request the Oversight Board consider.

**Items No. 52 through 54 Cinema Place Maintenance Reserves:**

The Successor Agency requested \$181,292 to fund various maintenance reserves. The Successor Agency acknowledges the DOF's request to delete Items 52 and 53 and agrees to delete those items from the Third ROPS.

Item 54 is a request for funding of a maintenance reserve for the Cinema Place Project. The Successor Agency acknowledges that neither the Cinema Place Parking Maintenance Agreement nor the Ground Lease requires the creation of a maintenance reserve. That being said, as discussed in Part B below, it had been the practice of the Dissolved RDA to routinely deposit funds into a property maintenance reserve for the Cinema Place project as a prudent management practice and in anticipation of required future maintenance needs. While no contract requires the reserve deposits, these types of reserve deposits can be classified as the costs of maintaining assets prior to disposition and thus an enforceable obligation under Section 34171(d)(1)(F). The Successor Agency respectfully requests that the DOF reconsider its position regarding the necessity of this reserve deposit, as it is recommended under prudent management practices to maintain maintenance reserves, which is a standard property carrying cost, thus constituting an enforceable obligation under Section 34171(d)(1)(F).

**Item 13 Insurance Costs:** The Successor Agency acknowledges the reclassification of Item No. 13.

**B. BACKGROUND/HISTORY**

**Items 23 Contract for Security Services:** The elimination of blight through the reduction of crime was one of the cornerstones of the activities funded by the Dissolved RDA. While no contract requires the payment of security services at the Cinema Place project by the Successor Agency, the prevention of crime through the payment for security services is a carrying cost of maintaining assets prior to disposition and thus an enforceable obligation under Section 34171(d)(1)(F). The Dissolved RDA began paying for security services in January 2008 shortly after the property began operations. The security services primarily include patrol of the Agency-owned parking structure adjacent to the cinema. The Oversight Board has considered

October 26, 2012

Page 2 of 4

Oversight Board Meeting  
January 15, 2013  
Page 8 of 14

**ATTACHMENT A****Hayward Successor Agency Meet and Confer Request Form Period 12/13B**

the contracts for security services and has recognized the importance of continuing to provide security services for the project as prudent property management and as a means of maintain the property value until the property is disposed of through the long-range management plan and thus approved the Third ROPS with Item No. 23 included.

**Item 54 Maintenance Reserve Funding:** Since the inception of the Cinema Place Parking Maintenance Agreement and the Ground Lease, the Dissolved RDA routinely deposited funds into a property maintenance reserve for the Cinema Place project as a prudent management practice and in anticipation of required future maintenance needs. Deposits to the Maintenance Reserve began in January 2009 and the total amount deposited is \$22,785. No funds have been utilized from the reserve yet. The Oversight Board has considered the funding of the maintenance reserve and has recognized the importance of continuing to make the deposit into the maintenance reserve as prudent property management and as a means of maintaining the property value until the property is disposed of through the long-range management plan and thus approved the Third ROPS with Item No. 54 included.

**C. JUSTIFICATION**

**Items 23 Security Services:** The costs associated with Item 23 are a property carrying cost and are thus appropriately included in the Third ROPS.

Health and Safety Code Section 34171(d)(1)(F), defines “enforceable obligations” to include any obligations incurred by the Successor Agency for the costs of maintaining assets prior to disposition.

As discussed in Part B above, to protect its investment in the project, the Dissolved RDA routinely paid for the provision of security services for the Cinema Place project. The Dissolved RDA funded the security services even though it was not contractually obligated to do so in order to maintain the Dissolved RDA’s investments in the asset. The Dissolved RDA began paying for security services in January 2008 shortly after the property began operations. The security services primarily include patrol of the Agency-owned parking structure adjacent to the cinema.

The Successor Agency and Oversight Board will endeavor to determine how best to dispose of the property under the long-range property management plan, but until such time as the Successor Agency is able to dispose of the property, the funding of the security services should be continued. The security services paid for under Item No. 23 should be classified as carrying costs of maintaining an asset prior to disposition and thus by definition constitute enforceable obligations under Health and Safety Code Section 34171(d)(1)(F).

**Items 54 Cinema Place Maintenance Reserve:** The costs associated with Item 54 are a property carrying cost and are thus appropriately included in the Third ROPS.

October 26, 2012

Page 3 of 4

Oversight Board Meeting  
January 15, 2013  
Page 9 of 14

**ATTACHMENT A****Hayward Successor Agency Meet and Confer Request Form Period 12/13B**

Health and Safety Code Section 34171(d)(1)(F), defines “enforceable obligations” to include any obligations incurred by the Successor Agency for the costs of maintaining assets prior to disposition.

As discussed in Part B above, since the inception of the Cinema Place Parking Maintenance Agreement and the Ground Lease, the Dissolved RDA routinely deposited funds into a property maintenance reserve for the Cinema Place project as a prudent management practice and in anticipation of required future maintenance needs. Deposits to the Maintenance Reserve began in January 2009 and the total amount deposited is \$22,785. No funds have been utilized from the reserve yet. The Oversight Board has considered the funding of the maintenance reserve and has recognized the importance of continuing to make the deposit into the maintenance reserve as prudent property management and as a means of maintaining the property value until the property is disposed of through the long-range management plan and thus approved the Third ROPS with Item No. 54 included

The Successor Agency and Oversight Board will endeavor to determine how best to dispose of the property under the long-range property management plan, but until such time as the Successor Agency is able to dispose of the property, the funding of the maintenance reserve should be continued. The maintenance reserve paid under Item 54 should be classified as carrying costs of maintaining an asset prior to disposition and thus by definition constitute enforceable obligations under Health and Safety Code Section 34171(d)(1)(F).



December 18, 2012

Ms. Kelly McAdoo Morariu  
Assistant City Manager  
City of Hayward Successor Agency  
777 B Street  
Hayward, CA 94541

Dear Ms. Morariu:

Subject: Recognized Obligation Payment Schedule

This letter supersedes Finance's Recognized Obligation Payment Schedule (ROPS) letter dated October 19, 2012. Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of Hayward Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule (ROPS III) to the California Department of Finance (Finance) on September 4, 2012 for the period of January 1 through June 30, 2013. Finance issued its determination related to those enforceable obligations on October 19, 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 16, 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. 3 – Repayment Agreement with City of Hayward in the amount of \$7 million; no funding source identified. Finance continues to deny the item at this time. Finance denied the item as HSC section 34171 (d) (2) states that agreements, contracts, or arrangements between the City that created the former redevelopment agency (RDA) and the former RDA are not enforceable obligation. The Agency requested further clarification. Finance has not issued a Finding of Completion to the Agency; therefore, the provisions of HSC section 34171 apply. HSC section 34171 (d) (2) states that 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, this item is currently not an enforceable obligation.
- Item No. 4 – Loan for the Supplemental Education Revenue Augmentation Fund (SERAF) in the amount of \$3.9 million; no funding source identified. Finance continues to deny the item at this time. Finance denied the item as HSC section 34176 (e) (6) (B) states that loan or deferral repayments shall not be made prior to fiscal year 2013-14. The Agency requested further clarification. The item may be listed for repayment in future ROPS beginning in fiscal year 2013-14 per HSC section 34176 (e) (6) (B). However, this item is currently not an enforceable obligation.

- Item No. 23 – Contract for Security Services in the amount of \$68,000. Finance continues to deny the item. Finance denied the item as HSC section 34177 (h) states the successor agencies are required to expeditiously wind down the affairs of the RDA. Furthermore, HSC section 34181 (e) states that the Oversight Board shall direct the successor agency to determine whether any contracts, agreements, or other arrangements between the dissolved RDA and any private parties should be terminated. The Cinema Place Parking Maintenance and Easement Agreement section 4.03, sub-section D, states that the Agency has the right, but not the obligation, to provide security services, and further states the developer may elect to provide, at its sole expense, the necessary patrol service and security personnel. No contracts for the services have been entered into; therefore, this item is not an enforceable obligation. The Agency contends the item is an enforceable obligation because the former RDA began paying for security services in January 2008 and this is a cost of maintaining an asset prior to disposition. However, the purchase agreement provided for the security services is with the City and not the former RDA or the Agency. Since neither the former RDA nor the Agency are parties to the agreement, this is not an enforceable obligation.
- Item Nos. 52 through 54 – Cinema Place Maintenance Reserve Payments in the amount of \$181,292. Finance continues to deny the items. Finance denied the items as neither the Cinema Place Parking Maintenance Agreement nor the Ground Lease state there is an obligation to fund a reserve account for parking operation costs. The Agency did not dispute Items 52 and 53; however, the Agency contends Item 54 is an enforceable obligation because the former RDA routinely deposited funds into a property maintenance reserve for the Cinema Place project. However, neither the Cinema Place Parking Maintenance Agreement nor the Ground Lease requires that a reserve account be funded. Furthermore, neither ABx1-26 nor AB 1484 allows for the creation of reserves except for bond debt service payments. Therefore, these items are not enforceable obligations and not eligible for entitled to Redevelopment Property Tax Trust Fund (RPTTF) funding.

In addition, per Finance's ROPS letter dated October 19, 2012, the following items not disputed by the Agency continue to be denied:

- Item Nos. 24 through 28 – Contracts for Maintenance and Utilities in the amount of \$49,600. The Cinema Place Parking Maintenance and Easement Agreement section 4.03 states that the Agency will pay 50 percent of the remaining parking operation costs which include maintenance and utilities. The Agency is requesting amounts that are equal or greater than the annual amount of the purchase orders and should only request RPTTF for the amount equal to 50% of the estimated costs. Therefore, of the total combined obligation of \$99,200 listed on the ROPS, \$49,600 is not eligible for RPTTF funding.
- Although Item No. 3 was reclassified as administrative cost, the administrative cost allowance has not been exceeded.

The Agency's maximum approved RPTTF distribution for the reporting period is \$4,216,021 as summarized below:

<b>Approved RPTTF Distribution Amount For the period of January through June 2013</b>	
Total RPTTF funding requested for obligations	\$ 4,140,393
Less: Six-month total for item(s) denied or reclassified as administrative cost*	
Item 13*	27,021
Item 23	34,000
Item 24	525
Item 25	1,750
Item 26	3,000
Item 27	7,000
Item 28	125
Item 52**	0
Item 53**	0
Item 54	2,972
Total approved RPTTF for enforceable obligations	<u>\$ 4,064,000</u>
Plus: Allowable RPTTF distribution for administrative cost for ROPS III	<u>152,021</u>
<b>Total RPTTF approved:</b>	<b>\$ 4,216,021</b>

\* Reclassified as administrative cost

\*\* No RPTTF funding requested for the reporting period

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. Tracy Vesely, Finance Director, City of Hayward  
Ms. Carol S. Orth, Tax Analysis Division Chief, County of Alameda  
California State Controller's Office