DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR

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May 12, 2013

Mr. Allen Parker, City Manager
City of San Bernardino Successor Agency
300 North D Street
6th Floor
San Bernardino, CA 94218

Dear Mr. Parker:

Subject: Recognized Obligation Payment Schedule

Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of San Bernardino Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule (ROPS 13-14A) to the California Department of Finance (Finance) on March 28, 2013 for the period of July through December 2013. Finance has completed its review of your ROPS 13-14A, which may have included obtaining clarification for various items.

HSC section 34171 (d) defines enforceable obligations. Based on a sample of line items reviewed and application of the law, the following do not qualify as enforceable obligations:

- Item Nos. 1 and 5 – Payments for Lease Revenue Bonds totaling $22,449,808. Based on the documentation provided by the Agency these bonds are secured through lease payments of the City of San Bernardino (City). Additionally, the obligation to make debt service payment on these bonds is that of the City of San Bernardino (City), not the Agency. As a result, these items are not enforceable obligations and not eligible for funding.

- Item Nos. 2, 12, and 13 – Payments for Lease Revenue Bonds totaling $3,442,750. These bonds are secured through lease payments of the City of San Bernardino (City) and/or other third parties. Based on the documentation provided by the Agency there is no requirement to fund these bond payments through tax increment. Therefore, these line items are not eligible for Redevelopment Property Tax Trust Fund (RPTTF) funding. However, they are approved for funding from other funding sources. Specifically, the lease payments received by the Agency from the City and/or other third parties.

- Item No. 21 – Carousel Mall Note in the amount of $16,586,000; $336,000 payable from RPTTF, and $16.25 million payable from Other Funds. According to the documentation provided, the maturity date of the obligation was May 3, 2012. Therefore, this line item is not an enforceable obligation and is not eligible for RPTTF funding or funding from Other Funds.

- Item No. 24 – San Bernardino Building Tax Sharing Agreement in the amount of $1,868,505. The Agency was unable to provide an executed agreement; therefore, this line item is not an enforceable obligation and is not eligible for RPTTF funding.

- Item No. 26 – Woolworth Building Installment Note in the amount of $506,637. The amendment to the installment note only extended the agreement through January 1, 2013, and does not indicate a continuation of the obligation past that period. Therefore, this line item is not an enforceable obligation and is not eligible for RPTTF funding.

- Item No. 39 – Construction Management Services contract in the amount of $45,000. 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 this line item was awarded after June 27, 2011. Therefore, this line item is not an enforceable obligation and is not eligible for RPTTF funding. Additionally if this was for project management costs, it is unclear for what approved ROPS project this is for.

- Item Nos. 44 and 46 – Housing Monitoring Services and Housing Loan totaling $497,500. HSC section 34176 (a) (1) 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. Since the City of San Bernardino assumed the housing functions, the obligations associated with these functions are the responsibility of the housing successor. Therefore, these line items are not enforceable obligations and are not eligible for RPTTF funding.

- Item Nos. 63 through 75, 77, and 79 – Regal Cinema and Theatre Square Project contracts with various third parties totaling $4,211,001; payable from Other Funds. The former RDA is neither a party to the contract nor responsible for payment of the contract. Additionally, these items were denied as an inclusion to the ROPS for the period January through June 2013, and that decision was later upheld through the Meet and Confer process in our letter dated December 18, 2012. Finance continues to deny these line items as enforceable obligations.

- Item Nos. 76, 78, and 80 – Professional Services contracts totaling $32,474. The former RDA is neither a party to the contracts nor responsible for the payment of the contracts. Therefore, these line items are not enforceable obligations and are not eligible for RPTTF funding.

- Claimed administrative costs of $619,380 exceed the allowance by $299,085. HSC section 34171 (b) limits fiscal year 2013-14 administrative expenses to three percent of property tax allocated to the successor agency or $250,000, whichever is greater. As a result, the Agency is eligible for $510,467 in administrative expenses. Although $619,380 is claimed for administrative cost, Item No. 83 - General Legal Services, in the amount of $71,621 is considered an administrative expense and should be counted toward the administrative cost allowance cap. Therefore, $180,534 of excess administrative cost is not allowed.

  Additionally, per HSC section 34177 (m) (2), the Agency's administrative allowance shall be further reduced by 25 percent, as the approved oversight board ROPS was not submitted to Finance within ten days of the March 1, 2013 deadline. Therefore, the administrative allowance is further reduced by $127,617 ($510,467 x 25% = $127,617).

Except for items denied in whole or in part as enforceable obligations, Finance is not objecting to the remaining items listed on your ROPS 13-14A. This determination applies only to items where funding was requested for the six month period. If you disagree with the determination with respect to any items on your ROPS 13-14A, you may request a Meet and Confer within five business days of the date of this letter. The Meet and Confer process and guidelines are available at Finance's website below:

http://www.dof.ca.gov/redevelopment/meet_and_confer/

The Agency's maximum approved Redevelopment Property Tax Trust Fund (RPTTF) distribution for the reporting period is $11,521,491 as summarized below:

| **Approved RPTTF Distribution Amount For the period of July through December 2013** | |
|---|---|
| Total RPTTF funding requested for obligations | $ 20,645,999 |
| Minus: Six-month total for items denied or reclassified as administrative cost | |
| Item 1 | 793,298 |
| Item 2 | 10,000 |
| Item 5 | 870,188 |
| Item 12 | 44,225 |
| Item 13 | 40,359 |
| Item 21 | 336,000 |
| Item 24 | 69,100 |
| Item 26 | 506,637 |
| Item 39 | 35,000 |
| Item 40 | 400,000 |
| Item 44 | 32,250 |
| Item 46 | 400,000 |
| Item 78 | 4,953 |
| Item 80 | 16,813 |
| Item 83* | 71,621 |
| Total approved RPTTF for enforceable obligations | $ 17,015,555 |
| Plus: Allowable RPTTF distribution for ROPS 13-14A administrative cost | 510,467 |
| Minus: 25% Admin Reduction | (127,617) |
| Minus: ROPS II Prior Period Adjustment | (5,876,914) |
| **Total RPTTF approved for distribution:** | **$ 11,521,491** |

*Reclassified as administrative costs

Pursuant to HSC Section 34186 (a), successor agencies were required to report on the ROPS 13-14A form the estimated obligations and actual payments (prior period adjustments) associated with the July through December 2012 period (ROPS II). Based on our review of the Agency's prior period adjustment reporting, the Agency illegally used distributed RPTTF for non-approved ROPS items. Pursuant to HSC 34177 (a) (3) only those payments listed in the Recognized Obligation Payment Schedule may be made by the successor agency from the funds specified in the ROPS. Furthermore, pursuant to HSC section 34178 (a), the Agency or oversight board is not allowed to restore funding for an obligation that was denied by Finance. The table below delineates the payments that were not authorized.

| ROPS II Expenditures Made without Finance Approval<br>As reported by Agency on Prior Period Payment worksheet | | |
|---|---|---|
| Form A, Item 14.1 | $ | 651,996 |
| Form A, Item 21 | $ | 330,000 |
| Form A, Item 86 | $ | 711,485 |
| Form A, Item 89 | $ | 4,183,433 |
| **Total unauthorized payments from RPTTF** | **$** | **5,876,914** |

As a result of our review, Finance is hereby adjusting the prior period adjustment as reported on the ROPS 13-14A form to accurately reflect only those payments that were authorized by Finance on the Agency's ROPS II form. The total prior period adjustment, as calculated by Finance is $5,876,914.

Finance has further determined that the Agency illegally paid obligations that are subordinated to RDA bond debt service payments in the ROPS II period. According to County Auditor-Controller reports for the ROPS II period, the Agency received sufficient funding to cover all debt service payments for that period. As such, the Agency should not have used bond reserves in order to make debt service payments. Specifically, the Agency was distributed $11,165,764 during the ROPS II period and approved enforceable obligations by Finance totaled $12,857,031. Of the approved enforceable obligation amount, debt service only totaled $9,930,335. This was $1,235,429 less than what was actually distributed to the Agency. Pursuant to HSC 34183 (a) (2) (A) the Agency was required to make bond payments the first priority for payment from distributed RPTTF. The Agency's failure to follow the law unnecessarily jeopardized bond payments and bond holders.

Finally, Finance notes that the Agency's available RPTTF for the ROPS 13-14A period, as calculated by the County Auditor-Controller is estimated to be $12,110,904. The Agency is approved to receive $11,521,491 in RPTTF. As such, when including the funding that is available from the prior period adjustment, sufficient funding is available to pay all bond debt service obligations of the Agency, including replenishing the inappropriate draw down of the Agency's bond reserves. Finance reiterates that upon distribution of the RPTTF the Agency is required to follow the priority of payments as outlined in the statutes.

Please refer to the ROPS 13-14A schedule that was used to calculate the approved RPTTF amount:

http://www.dof.ca.gov/redevelopment/ROPS/ROPS 13-14A Forms by Successor Agency/.

This is Finance's determination related to the enforceable obligations reported on your ROPS for July 1 through December 31, 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 denied on this ROPS or a preceding ROPS. The only exception is for those items that have received a Final and Conclusive determination from Finance pursuant to HSC 34177.5 (i). Finance's review of items that have received a Final and Conclusive determination is limited to confirming the scheduled payments as required by the obligation.

The amount available from the RPTTF is the same as the amount of 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.

To the extent proceeds from bonds issued after December 31, 2010 exist and are not encumbered by an enforceable obligation pursuant to 34171 (d), HSC section 34191.4 (c)(2)(B) requires these proceeds be used to defease the bonds or to purchase those same outstanding bonds on the open market for cancellation.

Please direct inquiries to Nichelle Thomas, Supervisor or Susana Medina Jackson, Lead Analyst at (916) 445-1546.

Sincerely,

STEVE SZALAY
Local Government Consultant

cc: Mr. Mike Trout, Project Manager
Ms. Vanessa Doyle, Auditor Controller Manager, County of San Bernardino
California State Controller's Office