DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR

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December 18, 2012

Mr. Marc Roberts, Executive Director
City of Livermore
1052 S. Livermore Avenue
Livermore, CA 94551

Dear Mr. Roberts:

Subject: Recognized Obligation Payment Schedule

This letter supersedes Finance's Recognized Obligation Payment Schedule (ROPS) letter dated October 1, 2012. Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of Livermore Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule (ROPS III) to the California Department of Finance (Finance) on August 17, 2012 for the period of January 1 through June 30, 2013. Finance issued its determination related to those enforceable obligations on October 1, 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 24, 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 items being disputed.

- Item Nos. 2 through 9, 13, 17 through 20, and 23 – City Loans and Advances, in the amount of $24.7 million. At this time, Finance continues to deny these items. Finance denied these items as an enforceable obligation as HSC section 34171 (d) (2) states that agreements, contracts, or arrangements between the city that created the redevelopment agency (RDA) and the former RDA are not enforceable. Section 34171 (d) (2) also adds, loan agreements entered into between the RDA and the city, county, or city and county that created it, within two years of the date of creation of the RDA, may be deemed to be enforceable obligations. The loans and advances were not issued within two years of the RDA's creation date of 1981 and are not eligible for Redevelopment Property Tax Trust Fund (RPTTF) funding on this ROPS. 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 Nos. 10 and 11 – Supplemental Educational Revenue Augmentation Fund (SERAF) Loan from Low and Moderate Income Housing Fund (LMIHF) in the amount of $1.9 million. At this time, Finance continues to deny these items. HSC section 34176 (e) (6) (B) specifies loan or deferral repayments to the low and moderate income housing fund shall not be made prior to the 2013-14 fiscal year. Since these items cannot be paid at this time, they are not enforceable obligations and not eligible for RPTTF funding. We note that no RPTTF funding was requested for the reporting period.

- Item No. 21 (a through g) – Regional Theater Disposition and Development Agreement (DDA) in the amount of $146.8 million. Finance continues to deny this item. The Amended and Restated DDA was executed by and among the former RDA, the City of Livermore (City), and the Livermore Valley Performing Arts Center (LVPAC) on February 14, 2011. According to the DDA, the RDA would be obligated to make rental payments once the leases are executed in connection with the construction and installation of the Regional Performance Arts Theater Project (Project). Prior to the execution of the leases, several conditions have to be met. Furthermore, the DDA requires the RDA to perform various tasks to manage the construction and improvements of the Project, including but not limited to:

    - The RDA shall in its sole discretion either agree to pay the excess costs or instruct LVPAC to reduce the scope of work so that the total development costs do not exceed the established limit.
    - If LVPAC desires to make substantial changes in the construction plans, the proposed changes shall be submitted to the RDA's Board for approval.
    - The RDA shall approve change orders over a certain amount.

    HSC section 34177 (h) requires the successor agencies to expeditiously wind down the affairs of the dissolved RDAs and provides the successor agencies with limited authority only to the extent needed to perform a winding down of the RDA affairs. The RDA ceased to exist as of February 1, 2012. Therefore, specific pre-lease closing and construction management requirements outlined in the DDA can no longer be performed by the RDA or its Board. The City indicated during the meet and confer session that it would perform the tasks previously required of the RDA. Unfortunately, any transfer of the RDA's powers to a third party were also impacted by the prohibitions and the dissolution and is not allowed. Consequently, the RDA's obligations related to the DDA are not enforceable.

    We also note that one of the conditions in the DDA requires the LVPAC to issue $98 million in LVPAC bonds to secure the funding for the Project. It is our understanding the LVPAC bonds have not been issued to secure the financing for the Project.

- Item No. 16 – Lease Agreement, in the amount of $386,010. Finance continues to deny this item. HSC section 34177.3 (a) states that successor agencies shall lack the authority to create new enforceable obligations, except in compliance with an enforceable obligation that existed prior to June 27, 2011. The RDA initially entered into the lease agreement in 1988 with the owner to lease a walkway. On April 12, 2007, a lease agreement was executed to extend the term of the initial lease, to a period of four years beginning with July 23, 2007. The extended lease term expired on June 23, 2011. The agency indicated that while no new lease was provided to support continuation of the lease, the previous lease commitment contained a clause that triggered a month to month obligation for the Agency if the Agency was still in possession of the property. However, HSC section 34177 (h) requires successor agencies to expeditiously wind down the affairs of the dissolved RDA. The Agency has no authority to remain in possession of a property it does not own. Retaining possession of the property would contradict the intent to expeditiously wind down RDA affairs. As such, the month to month provisions should not take effect and the property should remain in possession of the lessor.

The Agency's maximum approved Redevelopment Property Tax Trust Fund (RPTTF) distribution for the reporting period is: $1,336,580 as summarized below:

Approved RPTTF Distribution Amount For the period of January through June 2013		
Total RPTTF funding requested for obligations	$	1,796,043
Less: Six-month total for items denied or reclassified as administrative cost		
Item 16		19,241
Item 17		36,462
Item 21e		138,380
Item 21g		390,380
Total approved RPTTF for enforceable obligations	$	1,211,580
Plus: Allowable RPTTF distribution for administrative cost for ROPS III		125,000
Total RPTTF approved:	$	1,336,580

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: Mr. Erik Peterson, Accountant, City of Livermore
Ms. Carol S. Orth, Tax Analysis, Division Chief, Alameda County Auditor-Controller's Office
California State Controller's Office