DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR
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December 18, 2012

Ms. Charity Hernandez, Redevelopment Manager
City of Ontario
303 East B Street
Ontario, CA 91746

Dear Ms. Hernandez:

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 Ontario 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 15, 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 and 30 – Low and Moderate Housing Set-Aside Loan in the total amount of $18,679,343 funded by Redevelopment Property Tax Trust Fund (RPTTF). Finance no longer objects to these items; however, Item 30 is reclassified as an administrative cost. Finance denied the items as according to the Agency staff, these items are loans made by Fannie Mae to the former redevelopment agency (RDA) in 2002 for affordable housing projects. Documentation was not provided to support the loans as enforceable obligations. The Agency contends the items are enforceable obligations because in February 2002, the former RDA entered into a Loan Agreement with Fannie Mae and U.S. Bank for $15,145,000. The total remaining balance of the loan, plus interest, is $18,677,943, which is calculated as follows: (a) the remaining principal balance of the loan is $12,053,159 and (b) interest payments due from the beginning of Fiscal Year 2012-13 through the maturity date of August 1, 2029, are $6,624,784. The Agency provided documents supporting the loan and the current amount due. Therefore, Item 4 is an enforceable obligation.

  Item 30 does not fall into any of the following categories that are specifically excluded from the administrative cap as defined by HSC section 34171 (b):

  - Any litigation expenses related to assets or obligations.

- Settlements and judgments.
- The costs of maintaining assets prior to disposition.
- Employee costs associated with work on specific project implementation activities, including, but not limited to, construction inspection, project management, or actual construction, shall be considered project-specific costs.

Therefore, Item 30 has been reclassified as an administrative cost.

- Item No. 7 – Staples Sales and Distribution Agreement in the amount of $10.2 million funded by RPTTF. Finance no longer objects to the item. Finance denied the item as documents provided were not sufficient to support the total obligation listed. The Agency contends the item is an enforceable obligation because the former RDA and Staples entered into an Operating Covenant and Facility Upgrade Loan Agreement, dated June 16, 2009, in which Staples agreed to remain in the City and the Agency agreed to pay Staples as follows: (a) pursuant to Section 8 of the Staples Agreement and as reflected in the Promissory Note attached to the Staples Agreement as Exhibit C, a $3 million loan that is forgiven in full if Staples remains in the City through January 1, 2018, and (b) pursuant to Section 9.2 of the Staples Agreement, a $900,000 annual covenant payment commencing in 2010 and ending in 2020 (for a total of $9 million) to fill the gap in rent between the Staples facilities in the City and the average rent of other comparable facilities in the region. The Agency has made two covenant payments and has not distributed any portion of the loan. The Agency is requesting $900,000 for the covenant payment and $1.5 million for the first half of the loan in the current ROPS. Therefore, the item is an enforceable obligation.

- Item No. 11 – Sea Partners 2011 Development and Disposition Agreement (DDA) in the amount of $410,000 funded by RPTTF. Finance continues to deny the item. Finance denied the item as the document provided was not sufficient in detailing the specific obligation of the former RDA under the Agreement. The Agency contends the item is an enforceable obligation because the former RDA and Sea Partners LLC entered into a DDA dated February 1, 2011, in which the former RDA agreed to sell certain property to Sea Partners at fair market value and Sea Partners agreed to develop the property. Pursuant to Section 4.1.2 of the Sea Partners Agreement, the former RDA agreed to construct certain off-site public improvements, at the former RDA's sole cost and expense. Based on the Engineer's Estimate, the Agency's improvements plus a contingency of $15,000 equals $410,000. However, the DDA required the former RDA to transfer land to the developer after June 27, 2011. The transfer is prohibited per HSC section 34163 (d), which states an agency shall not have the authority to, and shall not dispose of assets by sale, long-term lease, gift, grant, exchange, transfer, assignment, or otherwise, for any purpose. Since the transfer of property cannot occur, the Agency is unable to complete the off-site public improvements. Therefore, the item is not an enforceable obligation.

- Item No. 79 – 1998 Promissory Note for the Baxter Distribution Center in the amount of $3.5 million funded by RPTTF. Finance continues to deny the item at this time. Finance denied the item as this is an agreement between the City and the RDA. 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 unless the agreement was entered into within two years from the date of creation of the RDA. The RDA was established in 1971 and the agreement was entered into in 1998; therefore this item is not an enforceable obligation. Upon receiving a

Finding of Completion, the item may become an enforceable obligation during a subsequent ROPS period.

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

- Item No. 12 – Edwards Theatres 2002 Development and Disposition Agreement in the amount of $245,000 funded by RPTTF. The document provided was not sufficient in detailing the specific obligation of the former RDA under the Agreement.

- Item Nos. 56 through 77 – Various projects under the Corporative Agreement in the total amount of $236.41 million funded by RPTTF. HSC section 34171 (d) (2) states that agreements between the RDA and the city or county that created it are not enforceable obligations.

- Item No. 81 – 2007 Amended and Restated Development and Disposition Agreement for Low-Mod Housing Project in the amount of $15,129,889 funded by Low and Moderate Income Housing Fund (LMIHF). Sufficient document was not provided to support a payment schedule or the amount of the total obligation.

- Item No. 82 – Begin Program/2011 State of California Agreement in the amount of $1.29 million funded from the LMIHF. This item was not listed on the Housing Asset form provided previously and the contract provided is between the City of Ontario and a third party. As the former RDA is neither a party to the contract nor responsible for payment of the contract, this line item in not an enforceable obligation

- Items No. 83 through 87, 89 and 90 – Low-Mod Housing Project/Programs administration costs in the total amount of $889,614 funded by LMIHF. These items are identified as administration and maintenance costs of the Housing CARES program, and therefore are the obligations of the housing entity. HSC section 34176(a)(1) requires the housing entity to be responsible for the housing duties and obligations previously performed by the redevelopment agency. Therefore, these line items are not enforceable obligations.

- Item No. 88 – Various Grants for Low/Mod Housing CARES Program in the amount of $1,110,386 funded by LMIHF. These grants were awarded by the City, not the former RDA. As the former RDA is neither a party to the contract nor responsible for payment of the contract, this line item is not an enforceable obligation.

- Items 91 and 92 – Personnel Costs for the Housing Authority employees in the total amount of $34,137,690 funded by LMIHF. These items are administration costs of the Housing Authority. HSC section 34176(a)(1) requires the housing entity to be responsible for the housing duties and obligations previously performed by the redevelopment agency. Because the housing entity is responsible for its own operations and administrative costs, these line items are not enforceable obligations.

- Items 93 through 137 – Low-Mod Housing Projects/Programs Operational/Project Direct related expenses in the total amount of $1,690,398 funded by LMIHF. These items are identified as administration and maintenance costs of Low-Mod Housing Projects. HSC section 34176(a)(1) requires the housing entity to be responsible for the housing duties

and obligations previously performed by the redevelopment agency. The housing entity is responsible for its own operations and administrative costs. Therefore, these line items are not enforceable obligations.

- Administrative costs funded by RPTTF exceed the allowance by $1,232,573. HSC section 34171(b) limits administrative expenses to three percent of property tax allocated to the successor agency or $250,000, whichever is greater. Three percent of the property tax allocated is $721,482. Therefore, $1,232,573 of the claimed and reclassified $1,954,055 administrative costs is not an enforceable obligation. The following items were reclassified as administrative expenses:

    - Item No. 13 – Auditing Services
    - Item Nos. 15 and 16—Personnel Costs
    - Item No. 17 through 28, 31 through 55 —Ongoing Projects/Program Cost
    - Item No. 30 – Fiscal Agent

The Agency's maximum approved Redevelopment Property Tax Trust Fund (RPTTF) distribution for the reporting period is: $10,974,310 as summarized below:

Approved RPTTF Distribution Amount For the period of January through June 2013		
Total RPTTF funding requested for obligations	$	15,665,064
Less: Six-month total for item(s) denied or reclassified as administrative cost (See Attachement A for listing of denied or reclassified items)		5,412,236
Total approved RPTTF for enforceable obligations	$	10,252,828
Plus: Allowable RPTTF distribution for administrative cost for ROPS III		721,482
Total RPTTF approved:	$	10,974,310

Administrative Cost Calculation		
Total RPTTF for the period July through December 2012	$	13,796,564
Total RPTTF for the period January through June 2013		10,252,828
Total RPTTF for fiscal year 2012-13:	**$**	**24,049,392**
Allowable administrative cost for fiscal year 2012-13 (Greater of 3% or $250,000)		721,482
Administrative allowance for the period of July through December 2012		0
Allowable RPTTF distribution for administrative cost for ROPS III:	**$**	**721,482**

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: Mr. John Andrews, Economic Development Director, City of Ontario
Ms. Vanessa Doyle, Auditor Controller Manager, San Bernardino County
California State Controller's Office

Attachment A

Approved RPTTF Distribution Amount For the period of January through June 2013	
Total RPTTF funding requested for obligations	$ 15,665,064
Less: Six-month total for item(s) denied or reclassified as administrative cost	
Item 11	410,000
Item 12	245,000
Item 13*	6,000
Item 15*	194,165
Item 16*	1,050
Item 17*	46,875
Item 18*	50
Item 19*	6,000
Item 20*	50
Item 21*	5,000
Item 22*	100
Item 23*	125
Item 24*	1,000
Item 25*	1,250
Item 26*	500
Item 27*	2,500
Item 28*	20,000
Item 30*	700
Item 31*	5,000
Item 32*	500
Item 33*	43,138
Item 34*	275
Item 35*	125
Item 36*	250
Item 37*	25,000
Item 38*	1,000
Item 39*	52,500
Item 40*	125,000
Item 41*	50,000
Item 42*	25,000
Item 43*	50,000
Item 44*	50,000
Item 45*	71,250
Item 46*	50,000
Item 47*	100,000
Item 48*	100,000
Item 49*	50,000
Item 50*	50,000

Item 51*		100,000
Item 52*		50,000
Item 53*		50,000
Item 54*		50,000
Item 55*		100,000
Item 56		11,000
Item 57		200,000
Item 58		40,000
Item 59		10,000
Item 60		80,000
Item 61		6,000
Item 62		40,000
Item 63		80,000
Item 64		40,000
Item 65		1,200,000
Item 66		255,000
Item 67		10,000
Item 68		250,000
Item 69		5,000
Item 70		90,000
Item 71		333,333
Item 72		40,000
Item 73		7,500
Item 74		35,000
Item 75		100,000
Item 76		50,000
Item 77		40,000
Item 79		350,000
Total approved RPTTF for enforceable obligations	$	10,252,828
Plus: Allowable RPTTF distribution for administrative cost for ROPS III		721,482
Total RPTTF approved:	$	10,974,310

*Reclassified as administrative cost