

December 18, 2012

Ms. Teri Baker, Assistant to the City Manager  
City of San Bernardino  
300 North D Street, 6<sup>th</sup> Floor  
San Bernardino, CA 94218

Dear Ms. Baker:

Subject: Recognized Obligation Payment Schedule

This letter supersedes Finance's Recognized Obligation Payment Schedule (ROPS) letter dated October 18, 2012. 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 III) to the California Department of Finance (Finance) on August 30, 2012 for the period of January 1 through June 30, 2013. Finance issued its determination related to those enforceable obligations on October 18, 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 2, 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.

As related to items 50, 63 through 75, 77, and 79, ABx1 26 requires agencies to expeditiously wind down the affairs of the dissolved redevelopment agencies (RDAs) and provides successor agencies with limited authority only to the extent needed to implement the wind down of RDA affairs and perform under enforceable obligations. As of June 27, 2011, RDAs were prohibited from creating any new obligations and engaging in any new redevelopment. As of February 1, 2012, the RDAs were dissolved and ceased to exist. Any attempted transfers of an RDA's powers to a third party were also impacted by the prohibitions and the dissolution. Since the San Bernardino RDA no longer had the power to take out or make new loans or engage in any other activity to create obligations as of June 27, 2011, these powers could not be transferred to a third party. Thus, any specific obligations, whether by the former RDA or a third party acting on behalf of the former RDA that did not exist as of June 27, 2011, are not enforceable obligations within the meaning of HSC section 34171(d)(1). This conclusion includes the funding agreements executed with the Affordable Housing Solutions, Inc. (AHS) and San Bernardino Economic Development Corporation, Inc., (SBEDC), including any and all related projects, contracts, or agreements that arose from those funding agreements. In addition, Finance provides the following clarifications:

- Item No. 50 – Turtle Island Construction Services (Turtle Island) in the amount of \$1.1 million to be paid from the Low and Moderate Income Housing Fund (LMIHF). Finance continues to deny this item. Finance denied the item as an enforceable

obligation as HSC section 34176 (a) (1) requires the housing entity to be responsible for the housing duties and obligations previously performed by the redevelopment agency (RDA). The Agency states the item is an enforceable obligation because the Acquisition and Development Residual Receipts Loan Agreement with Lugo Senior Apartments dated December 10, 2010 creates an obligation for the former RDA to oversee expenditures of the loan recipient. The Agency contends that this obligation was assigned on March 3, 2011 to the AHS, who then entered into a contract with Turtle Island on July 8, 2011 to provide the oversight services based on a Housing Funding Agreement. As noted above, this item is not an enforceable obligation; therefore HSC section 34177 (d) applies which requires that all unencumbered balances in the LMIHF be remitted to the county auditor controller for distribution to the taxing entities.

- Items Nos. 63 through 75, 77, and 79 – Contracts with various third parties regarding the Regal Cinema and Theatre Square Project, the 4<sup>th</sup> Street Downtown Streetscape Project, and the Stadium Parking Lot Project in the amount of \$2.3 million to be paid from “Other Funds”. Finance denied the items as enforceable obligations as the former RDA is neither a party to the contracts nor responsible for payment of the contracts. The Agency contends the items are enforceable obligations because the Financing Agreement with CMB Export LLC dated March 1, 2011; EB-5<sup>1</sup> is an obligation of the former RDA to construct the projects. While the Financing Agreement requires the former RDA to use the loan proceeds on any one of a number of projects, it does not obligate the former RDA to enter into the contract in question. Furthermore, the Agency contends that this obligation under the EB-5 Financing Agreement was assigned on March 3, 2011 to the SBEDC, who then entered into contracts with various third parties after June 27, 2011 to construct the projects based on the Project Funding Agreement. Finance continues to deny these items as noted above. In addition, HSC section 34163 (b) prohibits a RDA from entering into a contract with any entity after June 27, 2011.

Items Nos. 31, 37, and 38 were reclassified by Finance as administrative costs. Finance no longer reclassifies items 31 and 38 as administrative costs; however, Finance denies item 37 as an enforceable obligation. The Agency contends that item 31 reflects retirement benefits they are contractually obligated to pay to its employees pursuant to HSC section 34171 (d) (1) (C); item 37 reflects the financial software that is required to enable the Agency to track its financial rights, duties, and obligations; and item 38 reflects costs incurred to maintain properties owned by the Agency prior to disposition pursuant to HSC section 34171 (d) (1) (F). Finance agrees that legally enforceable payments required in connection with the Agency’ employees and the costs of maintaining assets prior to disposition are enforceable obligations under HSC section 34171 (d) (1). Therefore, items 31 and 38 are enforceable obligations and should not be included in the administrative cap. The financial software is administrative in nature and should be included in the administrative cap; however, the July 26, 2011 contract provided for the services is between the SBEDC and Springbrook Software. Since the Agency is not a party to the contract and the financial software and services under the contract are not provided to the Agency, item 37 is neither an enforceable obligation nor should it be reclassified as an administrative cost.

---

<sup>1</sup> The federal EB-5 Visa Regional Center Program is administered by the United States Citizenship and Immigration Service to allow foreign nationals to obtain permanent residency status in the United States upon the investment of \$500,000 in a qualified investment activity that generates jobs in the United States. *Source: Memorandum from the City of San Bernardino to Finance dated 11/1/12*

Furthermore, per Finance's ROPS letter dated October 18, 2012, the following items not disputed by the Agency continue to be denied:

- Item Nos. 51 through 59, 61 through 62, and 81 – Miscellaneous Consultant Services in the amount of \$599,500 from the LMIHF and Redevelopment Property Tax Trust Fund (RPTTF). HSC section 34176 (a) (1) requires the housing entity to be responsible for the housing duties and obligations previously performed by the RDA. Therefore, these items are not enforceable obligations.

The Agency's maximum approved RPTTF distribution for the reporting period is: \$13,248,533 as summarized below:

<b>Approved RPTTF Distribution Amount</b>	
<b>For the period of January through June 2013</b>	
Total RPTTF funding requested for obligations	\$ 12,892,900
Less: Six-month total for items denied:	
Item 37	6,600
Item 54	5,000
Item 57	5,000
Item 58	10,000
Total approved RPTTF for enforceable obligations	\$ 12,866,300
Plus: Allowable RPTTF distribution for administrative cost for ROPS III	382,233
<b>Total RPTTF approved:</b>	<b>\$ 13,248,533</b>

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.

Ms. Teri Baker  
December 18, 2012  
Page 4

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. Mike Trout, Project Manager, City of San Bernardino  
Ms. Vanessa Doyle, Property Tax Manager, San Bernardino County  
California State Controller's Office