

November 18, 2016

Mr. Mark Scott, City Manager
San Bernardino City
300 North D Street, 6th Floor
San Bernardino, CA 94218

Dear Mr. Scott:

Subject: Amended Recognized Obligation Payment Schedule

Pursuant to Health and Safety Code (HSC) section 34177 (o) (1) (E), the San Bernardino City Successor Agency (Agency) submitted an Amended Recognized Obligation Payment Schedule for the period January 1, 2017 through June 30, 2017 (ROPS 16-17B) to the California Department of Finance (Finance) on September 19, 2016. Finance has completed its review of the Amended ROPS 16-17B.

Based on review and application of the law, Finance has made the following determinations:

- Item No. 38 – Real Property Maintenance for the requested adjustment of \$267,475 is partially allowed. Of the requested amount, \$17,348 is allowed and \$250,127 (\$35,475 + \$214,652) is not allowed as follows:
 - Funding for property maintenance cost for the Arden-Guthrie parcels in the amount of \$17,348 is allowed. Therefore, the total amount authorized for the item has been increased by \$17,348 in Redevelopment Property Tax Trust Fund (RPTTF) funding for the ROPS 16-17B period.
 - Funding for a potential shortfall in rental income in the amount of \$35,475 is not allowed. The Agency is projecting a total shortfall of \$35,375 in Other Funds for the ROPS 16-17 period and is requesting for RPTTF funding. Allocating funds for contingencies is not an allowable use of funds. Further, the ROPS A period has not ended and the ROPS B period has not started; therefore, a funding shortfall has not occurred yet. As a result, the requested adjustment of \$35,475 in RPTTF funding is not allowed.
 - Funding for property maintenance cost for the San Manuel Baseball Stadium in the amount of \$214,652 is not allowed. HSC section 34177 (o) (1) (E) allows an Agency to seek an adjustment for funding of approved enforceable obligations. To support the increase in funding, the Agency provided the Lease, Amendment to Lease and Amendment No. 2 (Lease) by and between the City of San Bernardino (City) and the San Bernardino Stampede, Inc. (Tenant). Since the Lease has not been listed on a previous Recognized Obligation Payment Schedule, the Lease is not considered an approved enforceable obligation. Therefore, the Agency is prohibited from seeking an increase of funding based on the Lease.

Further, based on our review, the Lease is not an obligation of the Agency. It is our understanding the former Redevelopment Agency (RDA) purchased the stadium property in 1990. After the former RDA's acquisition of the property, the City entered into the Lease with the Tenant. The Lease was only by and between the City and Tenant, and the RDA was not a party to the Lease.

Under the Lease, the City is obligated to pay for the property maintenance costs for San Manuel Baseball Stadium. The Agency asserts that the Agency has taken on the City's obligation because the Lease and its obligations follow the ownership of the land as an encumbrance. Finance asked the Agency on multiple occasions to explain how the Lease follows with the ownership of the land as an encumbrance if the land has never been owned by the City. Additionally, Finance asked that any explanation cite relevant law, documents, and agreements to support the Agency's explanation.

In response, the Agency cites to HSC sections 34171 (d) (1) (F), "Contracts or agreements necessary for the administration or operation of the successor agency, in accordance with this part, including but not limited to ... *costs of maintaining assets prior to disposition...*" (Emphasis added by the City.) The Agency, however, does not provide an explanation of how this language applies here given that the former RDA is not a party to the Lease, and that the plain language of the Lease imposes the property maintenance obligation on the *City*, not the former RDA.

The Agency also cites to section 34171(b)(5), which excludes specific things from what can be paid for by the Agency's administrative cost allowance including employee costs associated with project management. The Agency misreads the section to apply more generally to all project management costs (as opposed to the Agency's "employee costs associated with project management") and suggests that property maintenance is within the nature of project management, and thus, a cost that can be borne by the Agency. Finance disagrees that project management includes property maintenance or that employee costs associated with project management includes the cost of property maintenance. However, even if this were the case it is unclear why this section is relevant in explaining why the *City's* contractual obligation to pay for property maintenance costs should be borne by the Agency.

Finally, the Agency cites to Civil Code sections 1635 and 1636, which provide that contracts of public agencies are construed like contracts of private parties and that agreements are to be interpreted to give effect to the intent of the parties. From this, the Agency suggests that "where a predecessor to the [Agency] was obligated to and did provide maintenance under a contract with a private party, it is necessary to conclude that when a public agency (here, [Agency]) obtains rights to the property subject to the same agreement, it must uphold its part of the bargain." Finance agrees that agreements should be interpreted to give effect to the intent of the parties. Here, the contracting parties are the City and the Tenant. Under the Lease, the City and the Tenant agreed that *the City*, not the former RDA or Agency, would pay for property maintenance costs. The City and the Tenant agreed to this even though the City did not own the property. The Agency's argument assumes that the Agency assumed the City's contractual obligations simply through ownership of the property. However, the Agency has not provided Finance with any legal authority, or

agreement binding on the Agency, indicating that this is the case. As a result, the Agency has failed to explain how the Lease, and the City's obligations under the Lease, follows ownership of the land as an encumbrance when the land has never been owned by the City. Because the Lease provides that the *City* is obligated to pay for the property maintenance costs and the Agency has not provided Finance sufficient explanation as to why the City's contractual obligation is required to be borne by the Agency, Finance must deny this request.

The Agency's amended maximum approved RPTTF distribution for the ROPS 16-17B period is \$4,550,686 as summarized in the Approved RPTTF Distribution table on Page 4 (See Attachment).

Please refer to the ROPS 16-17B schedule used to calculate the total RPTTF approved for distribution:

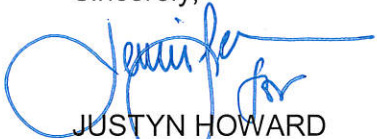
<http://www.dof.ca.gov/redevelopment/ROPS>

This is Finance's determination related to the funding of enforceable obligations reported on your Amended ROPS 16-17B. Please note there is not a Meet and Confer option for the Amended ROPS process so Finance's determination is final. Finance's determination is effective for this time period only and should not be conclusively relied upon for future ROPS periods. All items listed on a future ROPS are subject to review and may be denied even if it was not denied on this Amended ROPS or a preceding ROPS. The only exception is for items that have received a Final and Conclusive determination from Finance pursuant to HSC section 34177.5 (i). Finance's review of Final and Conclusive items 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 available prior to the enactment of the redevelopment dissolution statutes. 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 Agency in the RPTTF.

Please direct inquiries to Cindie Lor, Supervisor, or Michael Barr, Lead Analyst, at (916) 445-1546.

Sincerely,


JUSTYN HOWARD
Program Budget Manager

cc: Ms. Lisa Connor, Project Manager, San Bernardino City
Ms. Linda Santillano, Property Tax Manager, San Bernardino County

Attachment

Approved RPTTF Distribution For the period of January 2017 through June 2017	
Authorized RPTTF on ROPS 16-17B	\$ 4,381,225
Authorized Administrative RPTTF on ROPS 16-17B	152,113
Total Authorized RPTTF on ROPS 16-17B	4,533,338
Total Requested 16-17B RPTTF Adjustments	267,475
Finance RPTTF Adjustments	
Item No. 38	(250,127)
Total Finance Authorized 16-17B Adjustments	17,348
Total Amended ROPS 16-17B RPTTF approved for distribution	\$ 4,550,686