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**City Of National City  
SUCCESSOR AGENCY TO THE  
COMMUNITY DEVELOPMENT COMMISSION  
AS THE NATIONAL CITY REDEVELOPMENT AGENCY**

March 28, 2013

Steve Szalay  
Local Government Consultant  
Department of Finance  
915 L Street  
Sacramento, CA 95814-3706

And

Tracy Sandoval  
County of San Diego  
General Manager  
Finance and General Government/Auditor and Controller  
Property Tax Services  
5530 Overland Avenue, Fourth Floor  
San Diego, CA 92123

**SUBJECT: SAN DIEGO COUNTY AUDITOR-CONTROLLER'S COMMENTS/FINDINGS ON THE SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT COMMISSION AS THE NATIONAL CITY REDEVELOPMENT AGENCY'S RECOGNIZED OBLIGATION PAYMENT SCHEDULE FOR THE PERIOD OF JULY 1, 2013 THROUGH DECEMBER 31, 2013 INCLUDING THE SECOND ROPS PRIOR PERIOD RECONCILIATION**

Dear Mr. Szalay and Ms. Sandoval:

On March 20, 2013, the Successor Agency to the Community Development Commission as the National City Redevelopment Agency (the "Successor Agency") received the Excel File containing comments and findings of the San Diego County Auditor and Controller (the "County") on the Successor Agency's Recognized Obligation Payment Schedule for the period July 1, 2013 through December 31, 2013 (the "ROPS 13-14A") including the reconciliation of the Second ROPS for the period July 1, 2012 through December 31, 2012.

Please be advised that, although the County is not proposing adjustments to the June 1, 2013 distribution of funds from the Redevelopment Property Tax Trust Fund ("RPTTF") to the Successor Agency's Redevelopment Obligation Retirement Fund ("RORF"), the Successor Agency disputes the County's comments and findings based on the reasons provided in this letter, and respectfully requests that the California Department of Finance (the "DOF") not agree with the County in connection with the County's comments and findings.

Further, pursuant to Health and Safety Code (“HSC”) Section 34182.5 of the Dissolution Act (Assembly Bill No. X1 26 as amended by Assembly Bill No. 1484), the Successor Agency will be seeking the concurrence of its Oversight Board in the Oversight Board’s dispute of the County’s comments and findings and reference of the matter to the DOF for a determination of what items will be approved for inclusion in the ROPS 13-14A including the reconciliation of the Second ROPS. The County’s comments and findings and the Successor Agency’s dispute of same are discussed below:

### **COUNTY COMMENTS ON ROPS 13-14A**

#### **1. Items 1-4 – Tax Allocation Bonds (Debt Service Obligations) – Bank of New York and Deutsche Bank:**

The County noted that the total outstanding obligation amounts were increased between ROPS III and ROPS 13-14A.

**Successor Agency Response:** Previous ROPS had shown only the principal amounts due in the “Total Debt or Obligation” column of the ROPS. ROPS 13-14A now reflects both principal and interest payments outstanding in the “Total Debt or Obligation” column, which is more accurate than solely the principal amounts listed on previous ROPS. Notwithstanding, the actual payment amounts listed on each ROPS for the respective 6-month period were correct and had included both principal and interest. Health and Safety Code (“HSC”) Section 34171(d)(1)(A) of the Dissolution Act defines bonds and related payments, such as required debt service, reserve set-asides, and any other payments required under the indenture or similar documents governing the issuance of the outstanding bonds, as constituting an “enforceable obligation”. Further, HSC Section 34171 (d)(1)(E) of the Dissolution Act provides that any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy constitutes an “enforceable obligation” – such as the agreements/contracts with the bond holders. Therefore, both principal and required interest payments for each of the Tax Allocation Bonds constitute an enforceable obligation pursuant to HSC Sections 34171(d)(1)(A) and 34171(d)(1)(E) of the Dissolution Act and shall be payable from RPTTF.

#### **2. Item 90 – Accounting/Audit Support:**

The County shows \$250,000 being requested for this item with an outstanding obligation of \$0 and suggests that it should be an administrative cost.

**Successor Agency Response:** The actual amount requested in Item 90 on the ROPS 13-14A is \$25,000. No amount for the “Total Outstanding Debt or Obligation” is shown because it is an ongoing expense and because this service is due to bid out. The amount requested

includes \$10,000 for the Due Diligence Review (“DDR”) for the Other Funds that was statutorily required to be performed pursuant to HSC Section 34179.5. This item was reclassified by DOF as an administrative expense in ROPS III pending the provision of documentation that would allow the cost to be recovered on a future ROPS. This documentation is now available. The remaining \$15,000 is an estimate of the cost of the

annual financial audit of the Successor Agency, as statutorily required by the Dissolution Act, pending the outcome of an upcoming RFP process, which is a necessary expense of the Successor Agency.

The requirement to conduct a DDR of housing and non-housing other funds assets of the Successor Agency was enacted by the adoption of Assembly Bill No. 1484 (AB 1484) on June 27, 2012 and set forth in HSC 34179.5(a) of the Dissolution Act. The costs of the Successor Agency to retain and pay for the auditor were required by the Dissolution Act and are not administrative costs because they were incurred by the Successor Agency by virtue of the statutory obligation to retain an auditor to prepare the DDRs required under HSC Section 34179.5(a) of the Dissolution Act. As such, payment of this obligation is required by State law under HSC Section 34179.5(a) and therefore constitutes an enforceable obligation pursuant to HSC Section 34171(d)(1)(C) of the Dissolution Act and shall be payable from RPTTF.

Likewise, the requirement to retain an auditor and conduct an annual audit of the financial transactions and records of the Successor Agency is required by HSC Section 34177(n) of the Dissolution Act. The costs of the Successor Agency to retain and pay for the auditor were required by the Dissolution Act and are not administrative costs because they were incurred by the Successor Agency by virtue of the statutory obligation to retain an auditor to prepare the annual audit required under HSC Section 34177(n) of the Dissolution Act. As such, payment of this obligation is required by State law under HSC Section 34177(n) and therefore constitutes an enforceable obligation pursuant to HSC Section 34171(d)(1)(C) of the Dissolution Act and shall be payable from RPTTF.

3. Item 101 – General Property Management (CDC-RDA Assets):

The County suggests that this item is an administrative cost.

Successor Agency Response: This item is better described as the periodic inspection of and the upkeep of property conditions on Successor Agency owned real properties held for resale as well as making repairs on an as-needed basis. This work has historically been performed by City staff on behalf of the Community Development Commission as the National City Redevelopment Agency (the “CDC-RDA”).

HSC Section 34171(b) of the Dissolution Act provides in pertinent part that “*Administrative cost allowances shall exclude . . . . 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 and shall not constitute administrative costs.*” Therefore, these costs associated with maintaining the Successor Agency’s real properties are not considered administrative costs of the Successor Agency under the Dissolution Act and shall be payable from RPTTF.

4. Item 144 – Contract for Legal Services:

The County suggests that this is an administrative cost and says that it was reclassified as such by DOF in ROPS III.

**Successor Agency Response:** The County may be confused between items 88 and 144 on ROPS III. Item 144 is for litigation services and was approved by the DOF on ROPS III. Item 144 on ROPS 13-14A is for litigation legal services. In this regard, HSC Section 34171(b) provides in pertinent part that “*Administrative cost allowances shall exclude any litigation expenses related to assets or obligations, settlements and judgments.*” Further, HSC Section 34171(d)(1)(F) provides in pertinent part that “*agreements concerning litigation expenses related to assets or obligations*” constitute an “enforceable obligation”. Therefore, based on HSC Sections 34171(b) and 34171(d)(1)(F) of the Dissolution Act, and by definition, these litigation legal services costs do not constitute an administrative cost, but are considered a separate enforceable obligations and shall be payable from RPTTF. Additionally, the Legal Services Agreement with the payee was executed by the former CDC-RDA prior to the enactment of the Dissolution Act and, therefore, constitute an enforceable obligation pursuant to HSC Section 34171(d)(1)(E).

5. Item 161-162 – Deutsche Bank and Bank of New York - Fiscal Agent Fees:

The County observes that these are new obligations and that they seem to be administrative costs.

**Successor Agency Response:** These items were inadvertently omitted from certain previous ROPS. Fiscal agent fees are incurred as a result of the agent making the semi-annual debt service payments on the bonds listed as items 1 – 4 on the ROPS 13-14A. HSC Section 34171(d)(1)(A) of the Dissolution Act defines bonds and related payments, such as required debt service, reserve set-asides, and any other payments required under the indenture or similar documents governing the issuance of the outstanding bonds, as constituting an “enforceable obligation”. Further, HSC Section 34171 (d)(1)(E) of the Dissolution Act provides that any legally binding and enforceable agreement or contract that is not otherwise

void as violating the debt limit or public policy constitutes an “enforceable obligation” – such as the agreements/contracts with the bond holders and fiscal agents. Therefore, the fiscal agent fees relating to and required by each of the Tax Allocation Bonds constitute an enforceable obligation pursuant to HSC Sections 34171(d)(1)(A) and 34171(d)(1)(E) of the Dissolution Act and shall be payable from RPTTF.

6. Item 163 - Bank Service Charges:

The County noted that this is a new obligation and seems to be an administrative cost.

**Successor Agency Response:** This item was inadvertently omitted from certain previous ROPS. Bank service charges are a necessary expense related to the issuance of payments to vendors. The average cost is about \$1,000 per month. The “Total Due During Fiscal Year 2013-2014” on the ROPS 13-14A for this Item 163 is shown as \$12,000, but the \$6,000 payment required during this applicable 6-month period for ROPS 13-14A should have been entered in the RPTTF column on ROPS13-14A and was inadvertently missed. In this regard,

the Successor Agency would respectfully request that the ROPS 13-14A be amended to include the \$6,000 cost for this Item 163 payable from RPTTF.

The bank service charges constitute an “enforceable obligation” and not an administrative cost under the Dissolution Act. Specifically, the services assist the Successor Agency in its wind-down of former CDC-RDA affairs, particularly with its various projects, and therefore constitute an enforceable obligation pursuant to HSC Sections 34171(d)(1)(F) and 34177.3(b) of the Dissolution Act and are not administrative costs pursuant to HSC Section 34171(b) of the Dissolution Act. HSC Section 34171(d)(1)(F) provides in pertinent part that “*Contracts and agreements necessary for the administration or operation of the successor agency*” constitute an “enforceable obligation”. Further, HSC Section 34177.3(b) provides that “*Successor agencies may create enforceable obligations to conduct the work of winding down the redevelopment agency, including hiring staff, acquiring necessary professional administrative services and legal counsel, and procuring insurance.*” Therefore, based on HSC Sections 34171(d)(1)(F) and 34177.3 of the Dissolution Act, these required bank service charges do not constitute an administrative cost, but are considered a separate enforceable obligations and shall be payable from RPTTF.

7. Item 164 – Loan from Sewer Fund:

The County observed that this item was disallowed by the DOF in line #86 in a letter dated 12/18/12.

Successor Agency Response: This item is being resubmitted pending issuance of a Finding of Completion pursuant to HSC Section 34179.7 of the Dissolution Act prior to the ROPS 13-14A period. Pursuant to HSC Section 34191.4(b), upon the DOF’s issuance of a Finding of Completion to the Successor Agency, loan agreements between the CDC-RDA and the City of National City may be considered by the Oversight Board and, if approved, shall be deemed an enforceable obligation of the Successor Agency and repaid from RPTTF. Therefore, this obligation is included on the ROPS 13-14A and approved by the Oversight Board because it is anticipated that the Successor Agency will receive its Finding of Completion pursuant to HSC Section 34179.7 prior to the ROPS 13-14A applicable 6-month period, and therefore, be authorized to repay this loan during the ROPS 13-14A applicable 6-month period.

8. Item 165 – Coolidge Ave:

The County observed that this item was disallowed in line 43 in a letter dated 12/18/12.

Successor Agency Response: This item is being resubmitted pending issuance of a Finding of Completion pursuant to HSC Section 34179.7 of the Dissolution Act prior to the ROPS 13-14A period. Pursuant to HSC Section 34191.4(c), upon the DOF’s issuance of a Finding of Completion to the Successor Agency, bond proceeds shall be used for the purposes for which the bonds were sold. Therefore, this obligation is included on the ROPS 13-14A because it is anticipated that the Successor Agency will receive its Finding of Completion pursuant to HSC Section 34179.7 prior to the ROPS 13-14A applicable 6-month period, and therefore, be authorized to use \$755,000 of its bond proceeds toward this eligible and authorized bond project during the ROPS 13-14A applicable 6-month period.

9. Item 166 – Required replacement of backflow valve at Historic Depot:

The County observed that this is a new obligation.

Successor Agency Response: This expense is a necessary to repair a Successor Agency owned property at 900 W. 23rd St. in National City, California. As mentioned above, HSC Section 34171(b) of the Dissolution Act provides in pertinent part that “*Administrative cost allowances shall exclude . . . 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 and shall not constitute administrative costs.*” Therefore, this cost is associated with maintaining the Successor Agency’s real property are not considered an administrative cost of the Successor Agency under the Dissolution Act and shall be payable from RPTTF.

**COUNTY COMMENTS ON SECOND ROPS RECONCILIATION**

1. Item 86 - Legal Services for Oversight Board:

The County commented that this was an added item that was not approved, and that further, the actual payment should be an administrative expense. In addition, the County took the combined amount of \$25,060 of the individual amounts listed by the Successor Agency in Items 86 and 87 as enforceable obligations payable from RPTTF and added them into the column for Item 84 on the Second ROPS Reconciliation as payable from the “Administrative Allowance”.

Successor Agency Response: This item is not an added item and was approved on the Second ROPS by the DOF as Item 89 (this item is actually listed as Item 89 rather than Item 86 on the Second ROPS submitted to and approved by the DOF but identified as Item 86 on the Second ROPS Reconciliation). The amount of \$16,900 should remain classified as an RPTTF expense because the costs constitute an “enforceable obligation”. Specifically, costs incurred by the Successor Agency in connection with performing statutorily required services for the Oversight Board are not administrative costs and are not paid using the Administrative Cost Allowance because they are costs incurred by the Successor Agency due to the Successor Agency being required to perform services for the Oversight Board pursuant to HSC Section 34179(c) of the Dissolution Act. As such, payment of this obligation is required by State law at HSC Section 34179(c) and therefore constitutes an enforceable obligation pursuant to HSC Section 34171(d)(1)(C) of the Dissolution Act and shall be payable from RPTTF monies, not as an administrative cost.

2. Item 87 - Accounting/Audit Support:

The County commented that this was an added item that was not approved, and that further, the actual payment should be an administrative expense. In addition, the County took the combined amount of \$25,060 of the individual amounts listed by the Successor Agency in Items 86 and 87 as enforceable obligations payable from RPTTF and added them into the

column for Item 84 on the Second ROPS Reconciliation as payable from the “Administrative Allowance”.

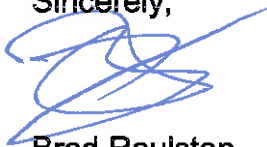
Successor Agency Response: This item is not an added item and was approved on the Second ROPS by the DOF as Item 90 (this item is actually listed as Item 90 rather than Item 87 on the Second ROPS submitted to and approved by the DOF but identified as Item 87 on the Second ROPS Reconciliation). The amount of \$8,160 should remain classified as an enforceable obligation payable from RPTTF monies.

Specifically, the requirement to conduct a DDR of housing and non-housing assets of the Successor Agency was enacted by the adoption of Assembly Bill No. 1484 (AB 1484) on June 27, 2012 and set forth in HSC 34179.5(a) of the Dissolution Act. The costs of the Successor Agency to retain and pay for the auditor were required by the Dissolution Act and are not administrative costs because they were incurred by the Successor Agency by virtue of the statutory obligation to retain an auditor to prepare the DDRs required under HSC Section 34179.5(a) of the Dissolution Act. As such, payment of this obligation is required by State law under HSC Section 34179.5(a) and therefore constitutes an enforceable obligation pursuant to HSC Section 34171(d)(1)(C) of the Dissolution Act and shall be payable from RPTTF.

Likewise, the requirement to retain an auditor and conduct an annual audit of the financial transactions and records of the Successor Agency is required by HSC Section 34177(n) of the Dissolution Act. The costs of the Successor Agency to retain and pay for the auditor were required by the Dissolution Act and are not administrative costs because they were incurred by the Successor Agency by virtue of the statutory obligation to retain an auditor to prepare the annual audit required under HSC Section 34177(n) of the Dissolution Act. As such, payment of this obligation is required by State law under HSC Section 34177(n) and therefore constitutes an enforceable obligation pursuant to HSC Section 34171(d)(1)(C) of the Dissolution Act and shall be payable from RPTTF.

Thank you for the opportunity to comment. Please let me know if there is any further information you require.

Sincerely,



Brad Raulston  
Executive Director