

ITEM 4

OVERSIGHT BOARD FOR CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY

DATE ISSUED: October 12, 2012

SUBJECT: Letter dated October 1, 2012 from San Diego County Auditor-Controller regarding the Third Recognized Obligation Payment Schedule and Authorizing the Oversight Board Chair to execute, and Successor Agency staff to submit, a letter to the County Auditor and the California Department of Finance

CONTACT/PHONE NUMBER: David Graham/236-6980

DESCRIPTIVE SUMMARY OF ITEM: California Health and Safety Code Section 34182.5 permits the San Diego County Auditor-Controller (“County Auditor”) to transmit notice, by October 1, 2012, of objections (i) to the inclusion of any items in the third Recognized Obligation Payment Schedule (“ROPS 3”) that are not demonstrated to be enforceable obligations and (ii) to the funding source proposed for any items. Section 34182.5 also allows the Oversight Board, if it disputes any finding of the County Auditor, to refer the matter to the California Department of Finance for a determination of what will be approved for inclusion in the applicable ROPS. The County Auditor’s October 1 letter identified items where the total outstanding amounts of the enforceable obligations in ROPS 3 are greater than the total outstanding amounts as of June 30, 2012. The letter also objected to the proposed funding source for two specific obligation line items in ROPS 3. Successor Agency staff now seeks the Oversight Board’s direction with respect to a potential response to the County Auditor’s letter.

STAFF RECOMMENDATION: Authorizing the Oversight Board Chair to execute, and Successor Agency staff to submit, a letter to the County Auditor and the California Department of Finance disputing the County Auditor’s objection to the proposed funding source in ROPS 3 for (i) the annual audit of the Successor Agency and, (ii) the Oversight Board’s legal counsel.

DISCUSSION:

Background

California Health and Safety Code Section 34182.5 permits the County Auditor to transmit notice, by October 1, 2012, of objections to (i) the inclusion of any items in ROPS 3 that are not demonstrated to be enforceable obligations and (ii) the funding source proposed for any items. Section 34182.5 also allows the Oversight Board, if it disputes any finding of the County Auditor, to refer the matter to the California Department of Finance (“DOF”) for a determination of what will be approved for inclusion in the applicable ROPS. The County Auditor transmitted a letter dated October 1, 2012 to the DOF (see Exhibit A hereto), in which the County Auditor identified two categories of “issues” in ROPS 3, as discussed below.

Fluctuations in Outstanding Amount of Enforceable Obligations

The first category in the County Auditor's October 1 letter involves line items where the total outstanding amount of the enforceable obligations in ROPS 3 (i.e., as of January 1, 2013) is greater than the total outstanding amount as of June 30, 2012. As noted above, California Health and Safety Code Section 34182.5 permits the County Auditor to object to (i) the inclusion of any items in ROPS 3 that are not demonstrated to be enforceable obligations and, (ii) the funding source proposed for any items. The first category of line items in the October 1 letter merely involves a time-based comparison of the outstanding amount of enforceable obligations and thus does not fit within the permissible scope of objections to the content of ROPS 3 under the relevant statutory provision. Consequently, Successor Agency staff is not recommending that the Oversight Board provide any response with respect to the first category.

It is noteworthy that Assembly Bill x1 26 and Assembly Bill 1484 (collectively, the "RDA Dissolution Laws") do not prohibit the Successor Agency from making adjustments to the total outstanding amount of any enforceable obligation from one ROPS to the next ROPS in order to reflect changed circumstances, initial mathematical or clerical errors, or for other reasons. More specifically, with respect to all but one of the items identified by the County Auditor, the actual expenditure during the ROPS 1 period was greater than the estimated amount listed in ROPS 1, but within the total expenditure amount for the life of the obligation. In an abundance of caution, the Successor Agency wanted to ensure that ROPS 3 reflected the overage paid during the ROPS 1 period in excess of the original estimated amount for ROPS 1. In the other instance (item 131 in ROPS 3 pertaining to Veterans Village of San Diego Phase IV), the Successor Agency originally assumed payment would be made in or about the ROPS 1 period, but now expects payment to be made instead during the ROPS 3 period.

Objections to Funding Source for Two Line Items

The second category in the County Auditor's October 1 letter addresses two specific line items in ROPS 3, namely line item 434 for funding of the annual audit in the amount of \$200,000 and line item 476 for funding of the Oversight Board's independent legal counsel in the amount of \$250,000. The County Auditor has objected to the proposed funding source for these two line items, suggesting that they should be funded by the administrative cost allowance, not by the Redevelopment Property Tax Trust Fund (RPTTF). The Successor Agency disagrees, as the County Auditor's position is not supported by the RDA Dissolution Laws.

With respect to each fiscal year beginning in Fiscal Year 2013, California Health and Safety Code Section 34171(b) defines the "administrative cost allowance" to mean an amount up to three percent of the property tax allocated from the RPTTF to the Redevelopment Obligation Retirement Fund maintained by the Successor Agency. The allowance amount excludes, and does not apply to, any administrative costs that can be paid from bond proceeds or from sources other than property tax. The allowance amount also excludes any litigation expenses related to

assets or obligations, settlements and judgments, and the costs of maintaining assets prior to disposition. Administrative costs exclude employee costs associated with work on specific project implementation activities, such as construction inspection, project management, or actual construction. Except as described above, the phrase “administrative costs” is not defined anywhere in the RDA Dissolution Laws.

As to line item 434 for funding of the annual audit, California Health and Safety Code Section 34177(n) requires the Successor Agency to cause a post audit of the financial transactions and records of the Successor Agency to be made at least annually by a certified public accountant. California Health and Safety Code Section 34171(d)(1)(C) states that an “enforceable obligation” includes obligations imposed by State law. The requirement for an annual audit is an obligation imposed by State law and thus qualifies as an enforceable obligation. In addition, the bond documents governing outstanding bond proceeds held by the Successor Agency similarly require the Successor Agency to cause the completion of an annual audit of the Successor Agency. California Health and Safety Code Section 34171(d)(1)(A) states that an “enforceable obligation” includes bonds, including any required debt service, reserve set-asides, and any other payments required under the indenture or similar documents governing the issuance of the outstanding bonds of the former redevelopment agency. The requirement for an annual audit involves a payment required as a result of the audit requirements set forth in bond documents, and such payment thus qualifies as an enforceable obligation. The funds needed by the Successor Agency to pay for the annual audit are not administrative costs, but rather expenses arising from specific statutory and contractual requirements.

As to line item 476 for funding of the Oversight Board’s independent legal counsel, California Health and Safety Code Section 34179(n) permits the Oversight Board to direct the Successor Agency to provide additional legal advice than what is given by Successor Agency staff. Before the State Legislature’s adoption of this statutory provision, the Oversight Board selected the law firm of Meyers Nave to serve as the Oversight Board’s independent legal counsel through the end of 2013 and entered into a legal services agreement for that purpose. Line item 476 has been included in ROPS 3 to provide funds to pay for the services provided by Meyers Nave to the Oversight Board. The legal representation provided by Meyers Nave to the Oversight Board has not been requested by the Successor Agency and does not benefit the Successor Agency. That legal representation is intended to assist the members of the Oversight Board, who have been appointed by their constituent local taxing entities, such as the City of San Diego, the County of San Diego, the local school districts, and the largest special district. Accordingly, the legal expenses of the Oversight Board should be shared proportionally by the local taxing entities in the form of distributions from the RPTTF and should not be counted against the Successor Agency’s limited administrative cost allowance.

Conclusion

For the reasons discussed above, Successor Agency staff respectfully requests that the Oversight Board authorize the Oversight Board Chair to execute, and Successor Agency staff to submit, a letter to the County Auditor and the California Department of Finance disputing the County Auditor's objection to the proposed funding source in ROPS 3 for (i) the annual audit of the Successor Agency and, (ii) the Oversight Board's legal counsel.

David Graham
Office of the Mayor

Jay Goldstone
Chief Operating Officer

Attachment: Exhibit A – Letter from the County Auditor dated Oct. 1, 2012



County of San Diego

DONALD F. STEUER
CHIEF FINANCIAL OFFICER
(619) 531-5413
FAX (619) 531-5219

AUDITOR AND CONTROLLER
1600 PACIFIC HIGHWAY STE 166, SAN DIEGO, CALIFORNIA 92101-2478

TRACY M. SANDOVAL
ASST. CHIEF FINANCIAL OFFICER/
AUDITOR & CONTROLLER
(619) 531-5413
FAX (619) 531-5219

October 1, 2012

Chris Hill, Principal Program Budget Analyst
California Department of Finance
915 L Street
Sacramento, CA 95814

Dear Mr. Hill:

RECOGNIZED OBLIGATION PAYMENT SCHEDULE REVIEW

Pursuant to Health and Safety Code (HSC) section 34177 (I) (2) (C), the Successor Agency (SA) of the City of San Diego submitted a Recognized Obligation Payment Schedule for the period January to June 2013 (ROPS III) to the California Department of Finance (DOF) on September 4, 2012. As authorized by HSC section 34182.5, the County Auditor and Controller has completed its review of the ROPS III and noted the following issues:

- The ROPS III template requires SAs to indicate the total outstanding debt or obligation amount as of June 30, 2012 and total due for fiscal year 2012-13 for each obligation; however, the reported outstanding totals as of June 30, 2012 are less than the reported total due for fiscal year 2012-13 for following items:
 - Line item 106, NTC civic, arts and culture center taxes, total outstanding of \$1 versus total due of \$2,887
 - Line item 131, veterans village of San Diego phase IV, total outstanding of \$780,890 versus total due of \$1,561,780
 - Line item 201, Barrio Logan community plan, total outstanding of \$450,949 versus total due of \$482,448
 - Line item 266, St. Joseph's park and east village green, total outstanding of \$83,720 versus total due of \$95,166
 - Line item 278, St. Joseph's park and other agency approved projects, total outstanding of \$279,612 versus total due of 281,618
 - Line item 282, north embarcadero visionary plan phase I, total outstanding of \$166,795 versus total due of \$166,875
 - Line item 285, east village green west and east block, total outstanding of \$5,181 versus total due of \$5,772
 - Line item 287, YMCA, total outstanding of \$53,663 versus total due of \$55,002
 - Line item 301, downtown traffic study, total outstanding of \$25,145 versus total due of \$26,290
 - Line item 305, world trade center and east village green, total outstanding of \$79,762 versus total due of \$80,607

- Line item 316, SEDC contract for corporate witness services, total outstanding of \$28,730 versus total due of \$30,000
 - Line item 318, SEDC contract for engineering services, total outstanding of \$79,101 versus total due of \$86,841
 - Line item 319, SEDC contract for property management services, total outstanding of \$73,500 versus total due of \$74,250
 - Line item 322, SEDC contract for corporate legal services, total outstanding of \$37,551 versus total due of \$52,026
 - Line item 325, SEDC contract for property management services, total outstanding of \$68,592 versus total due of \$75,000
 - Line item 327, SEDC contract for community outreach services, total outstanding of \$78,079 versus \$81,149
 - Line item 332, North Chollas community park, total outstanding of \$541,000 versus total due of \$2,887,000
 - Line item 344, Colina park neighborhood, no outstanding versus total due of \$2,791,999
 - Line item 359, Euclid Ave. sidewalk improvements, total outstanding of \$195,552 versus total due of \$196,000
 - Line item 363, phase II construction, total outstanding of \$552,704 versus total due of \$562,000
 - Line item 364, Morley Green improvements, total outstanding of \$74,281 versus total due of \$75,000
 - Line item 366, surface parking lot fencing, total outstanding of \$9,888 versus total due of \$11,000
 - Line item 369, University and 31st street public improvements, total outstanding of \$9,755 versus total due of \$50,000
 - Line item 372, quiet zone, total outstanding of \$141,626 versus total due of \$144,000
 - Line item 377, quiet zone, not outstanding versus total due of \$199,052
 - Line item 390, harbor drive pedestrian bridge, no outstanding versus total due of \$222,058
 - Line item 452, insurance, total outstanding of \$16,992 versus total due of \$100,500
- Based on our review of the provision of HSC section 34171(b), which defines the characteristics of administrative cost allowance, below items should be funded by administrative allowance instead of Redevelopment Property Tax Trust Fund (RPTTF); however, these items are listed on ROPS III as being funded by RPTTF.
 - Line item 434, RDA annual audit, in the amount of \$200,000
 - Line item 476, Oversight Board legal counsel, in the amount of \$250,000

Recognized Obligation Payment Schedule Review
Page Three
October 1, 2012

Please direct inquiries to Juan Perez, Senior Auditor and Controller Manager, of Property Tax Services at juan.perez@sdcountry.ca.gov or (858) 694-2901.

Sincerely,

A handwritten signature in black ink, appearing to read "Tracy M. Sandoval". The signature is fluid and cursive, with the first name "Tracy" being the most prominent.

TRACY M. SANDOVAL
Assistant Chief Financial Officer/Auditor and Controller

PTS:JP:ge

- c: Jennifer Whitaker, Supervisor, DOF
- Robert Scott, Supervisor, DOF
- Mark Nelson, Chair, Oversight Board of the SA
- David Graham, Deputy Policy Director, City of San Diego

OVERSIGHT BOARD RESOLUTION NUMBER OB-2012-33

A RESOLUTION OF THE OVERSIGHT BOARD FOR THE CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY AUTHORIZING THE TRANSMITTAL OF A LETTER DISPUTING THE SAN DIEGO COUNTY AUDITOR-CONTROLLER'S OBJECTION TO THE PROPOSED FUNDING SOURCE FOR TWO LINE ITEMS IN THE THIRD RECOGNIZED OBLIGATION PAYMENT SCHEDULE

WHEREAS, the former Redevelopment Agency of the City of San Diego (Former RDA) administered the implementation of various redevelopment projects, programs, and activities within designated redevelopment project areas throughout the City of San Diego (City); and

WHEREAS, in accordance with Assembly Bill x1 26 (AB 26), the Former RDA dissolved as of February 1, 2012, at which time the City of San Diego, solely in its capacity as the designated successor agency to the Former RDA (Successor Agency), assumed the Former RDA's assets and obligations; and

WHEREAS, the Successor Agency is required to administer the winding down of the Former RDA's operations and to ensure compliance with the Former RDA's obligations in accordance with AB 26, as amended by Assembly Bill 1484 (AB 1484); and

WHEREAS, California Health and Safety Code section 34182.5 permits the San Diego County Auditor-Controller (County Auditor) to transmit notice, by October 1, 2012, of objections to (i) the inclusion of any items in the third Recognized Obligation Payment Schedule (ROPS 3) that are not demonstrated to be enforceable obligations and (ii) the funding source proposed for any items; and

WHEREAS, California Health and Safety Code section 34182.5 also allows the Oversight Board, if it disputes any finding of the County Auditor, to refer the matter to the California Department of Finance (DOF) for a determination of what will be approved for inclusion in the applicable ROPS; and

WHEREAS, the County Auditor transmitted a letter dated October 1, 2012 to the DOF, in which the County Auditor, among other things, objected to the use of the Redevelopment Property Tax Trust Fund (“RPTTF”), rather than the administrative cost allowance, as the proposed funding source for two specific line items in ROPS 3, namely line item 434 for funding of the annual audit in the amount of \$200,000 and line item 476 for funding of the Oversight Board’s independent legal counsel in the amount of \$250,000; and

WHEREAS, the Oversight Board disputes the County Auditor’s objection to the funding source for the two pertinent line items in ROPS 3, for the reasons described in the Staff Report accompanying this item.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board that the Oversight Board Chair is authorized to execute, and Successor Agency staff is authorized to submit, a letter to the County Auditor and the DOF disputing the County Auditor’s objection to the proposed funding source in ROPS 3 for the annual audit of the Successor Agency and the Oversight Board’s legal counsel, for the reasons described in the Staff Report accompanying this item.

PASSED AND ADOPTED by the Oversight Board at a duly noticed meeting of the Oversight Board held on October ____, 2012.

Chair, Oversight Board