

RESOLUTION NO. 2013-223

**RESOLUTION OF THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SAN BERNARDINO APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE FOR THE PERIOD OF JULY THROUGH DECEMBER 2013 AND APPROVING CERTAIN RELATED ACTIONS (#2585)**

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6       **WHEREAS**, pursuant to Health and Safety Code (“HSC”) § 34172 (a)(1), the Redevelopment Agency of the City of San Bernardino was dissolved on February 1, 2012; and

7       **WHEREAS**, consistent with the provisions of the HSC, the Mayor and Common Council  
8 of the City of San Bernardino previously elected to serve in the capacity of the Successor Agency to  
9 the Redevelopment Agency of the City of San Bernardino (the “Successor Agency”); and

10       **WHEREAS**, per HSC § 34177 (l)(1), the Successor Agency is required to prepare a  
11 Recognized Obligation Payment Schedule (“ROPS”) before each six-month fiscal period, which  
12 corresponds to equal halves of a fiscal year (i.e., July through December and January through June);  
13 and

14       **WHEREAS**, the ROPS for the period of July through December 2013, also known as  
15 ROPS 13-14A, consists of several spreadsheets, which are appended to this Resolution as Exhibit  
16 “A”; and

17       **WHEREAS**, the ROPS is the basis for the Successor Agency’s authority to make payments  
18 due for enforceable obligations; and

19       **WHEREAS**, each ROPS must also be approved by the Oversight Board (“OS Board”) to  
20 the Successor Agency and is reviewable by the County Auditor-Controller, the County  
21 Administrative Officer, the California Department of Finance (“DOF”) and the California State  
22 Controller’s Office; and

23       **WHEREAS**, on March 25, 2013, the OS Board adopted Resolution SBOB/2013-01,  
24 approving the ROPS 13-14A, which included \$42,732,090-worth of enforceable obligations  
25 (“EOs”) that are listed in numerical order as EOs 1 through 83; and

26       **WHEREAS**, of the total amount of EOs listed on the ROPS 13-14A, \$21,265,379 were  
27 proposed for funding with Redevelopment Project Tax Trust Fund (“RPTTF”) money (formerly  
28 known as tax increment), of which \$619,380 represented the administrative allowance; and

**WHEREAS**, on May 29, 2013, the DOF issued their final determination letter, which is  
appended to this Resolution as Exhibit “B”, authorizing the distribution of \$12,219,402 of RPTTF to  
the Successor Agency; and

1       **WHEREAS**, the May 29, 2013 DOF letter also denied or reclassified \$3,076,760-worth of  
 2 enforceable obligations and made prior period adjustments for the period of ROPS II, i.e., July  
 3 through December 2012, in the amount of \$5,876,914, which are further described as follows:

- 4           1. Denial of obligations of the City of San Bernardino (i.e., EO Nos. 1, 2 & 5 related to  
 5 Certificates of Participation);
- 6           2. Denial of obligations of the Successor Housing Agency (i.e., EO No. 44 related to  
 7 affordability covenants monitoring);
- 8           3. Denial of obligations of the SBEDC (i.e., EO Nos. 63 through 77 & 79 related to EB-5  
 9 related contracts);
- 10          4. Removal of obligations that were paid during the period of ROPS III (i.e., EO Nos. 21,  
 11 26, 39, 46, 78 & 80, which no longer need to be placed on a ROPS);
- 12          5. Reclassification of an administrative cost (i.e., EO No. 83 related to past due invoices for  
 13 general special counsel services); and
- 14          6. Prior period adjustments related to the use of RPTTF during the period of ROPS II (i.e.,  
 15 EO Nos. A14.1, A21, A86 & A89 on the prior period estimate vs. actual form related to  
 16 the use of funds for approved EOs that lacked a specific allocation during ROPS II and  
 17 for the July 2012 claw-back payment to the County Auditor-Controller); and

18       **WHEREAS**, on June 3, 2013 the Successor Agency received a check from the County  
 19 Auditor-Controller in the amount of \$12,202,792.01, representing RPTTF for the period of ROPS  
 20 13-14A, which also equaled the amount of RPTTF that the County Auditor-Controller originally  
 21 estimated would be available to the Successor Agency for the ROPS 13-14A period; and

22       **WHEREAS**, due to the lateness of receipt of the May 29, 2013 DOF letter by the County  
 23 Auditor-Controller, the June 3, 2013 RPTTF distribution was \$16,609.99 less than authorized by the  
 24 DOF; and

25       **WHEREAS**, the County Auditor-Controller has advised that per DOF's direction, the  
 26 under-paid amount of \$16,609.99 should be listed on the ROPS 13-14B for payment during January  
 27 2014; and

28       **WHEREAS**, due to the shortfall in RPTTF receipts, by necessity the Successor Agency  
 must allocate the use of such funds in a responsible way consistent with HSC § 34183 (a)(2),  
 ensuring that current debt service obligations are the highest priority for payment; and

**WHEREAS**, consistent with the immediately foregoing recital, staff has prepared a plan  
 for the Successor Agency's use of the RPTTF received for the ROPS 13-14A period, which is  
 appended to this Resolution as Exhibit "C"; and

1       **WHEREAS**, this Resolution has been reviewed with respect to applicability of the  
2 California Environmental Quality Act (“CEQA”), the State CEQA Guidelines (California Code of  
3 Regulations, Title 14, §§ 15000 *et seq.*, hereafter the “Guidelines”), and the City’s environmental  
4 guidelines; and

5       **WHEREAS**, this Resolution is not a “project” for purposes of CEQA, as that term is  
6 defined by Guidelines § 15378, because this Resolution is an organizational or administrative  
7 activity that will not result in a direct or indirect physical change in the environment, per §  
8 15378(b)(5) of the Guidelines; and

9       **WHEREAS**, all of the prerequisites with respect to the approval of this Resolution have  
10 been met.

11       **NOW, THEREFORE, IT IS HEREBY RESOLVED, DETERMINED AND ORDERED**  
12 **BY THE MAYOR AND COMMON COUNCIL OF THE CITY OF SAN BERNARDINO**  
13 **ACTING AS THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF**  
14 **THE CITY OF SAN BERNARDINO, AS FOLLOWS:**

15       **Section 1.** The foregoing recitals are true and correct and are a substantive part of this  
16 Resolution.

17       **Section 2.** The Successor Agency’s ROPS 13-14A for the period of July through  
18 December 2013, which is attached hereto as Exhibit “A”, as amended by DOF’s May 29, 2013 final  
19 determination letter, which is attached hereto as Exhibit “B”, is approved.

20       **Section 3.** The plan for the Successor Agency’s use of RPTTF received for the ROPS  
21 13-14A period, which is attached hereto as Exhibit “C”, is approved.

22       **Section 4.** The City Manager, as Executive Director of the Successor Agency, or  
23 designee, is hereby authorized and directed to take such actions and execute such documents as are  
24 necessary to effectuate the intent of this Resolution, and to implement the ROPS 13-14A, as  
25 amended by DOF’s May 29, 2013 final determination letter, for the period of July through  
26 December 2013 on behalf of the Successor Agency, inclusive of authorizing and causing such  
27 payments consistent with the plan for the Successor Agency’s use of RPTTF received for the ROPS  
28 13-14A period.

29       **Section 5.** This Resolution is not a “project” for purposes of CEQA, as that term is  
30 defined by Guidelines § 15378, because this Resolution is an organizational or administrative  
31 activity that will not result in a direct or indirect physical change in the environment, per §  
32 15378(b)(5) of the Guidelines.


1           **Section 6.**    This Resolution shall take effect upon its adoption and execution in the  
2 manner as required by the City Charter.

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**RESOLUTION OF THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SAN BERNARDINO APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE FOR THE PERIOD OF JULY THROUGH DECEMBER 2013 AND APPROVING CERTAIN RELATED ACTIONS (#2585)**

I HEREBY CERTIFY that the foregoing Resolution was duly adopted by the Mayor and Common Council of the City of San Bernardino, acting as the Successor Agency to the Redevelopment Agency of the City of San Bernardino, at a joint regular meeting thereof, held on the 15th day of July, 2013, by the following vote, to wit:

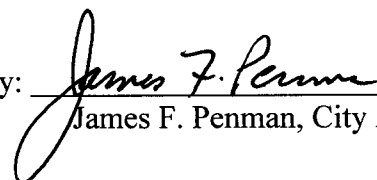
Council Members:	<u>Ayes</u>	<u>Nays</u>	<u>Abstain</u>	<u>Absent</u>
MARQUEZ	<u>X</u>	<u>---</u>	<u>---</u>	<u>---</u>
JENKINS	<u>X</u>	<u>---</u>	<u>---</u>	<u>---</u>
VALDIVIA	<u>---</u>	<u>X</u>	<u>---</u>	<u>---</u>
SHORETT	<u>X</u>	<u>---</u>	<u>---</u>	<u>---</u>
KELLEY	<u>---</u>	<u>X</u>	<u>---</u>	<u>---</u>
JOHNSON	<u>X</u>	<u>---</u>	<u>---</u>	<u>---</u>
MC CAMMACK	<u>---</u>	<u>---</u>	<u>X</u>	<u>---</u>

  
Georgeann Hanna, City Clerk  
City of San Bernardino

The foregoing Resolution is hereby approved this 17<sup>th</sup> day of July, 2013.

  
Patrick J. Morris, Mayor  
City of San Bernardino

Approved as to Form:

By:   
James F. Penman, City Attorney

**SUCCESSOR AGENCY TO THE  
REDEVELOPMENT AGENCY OF THE CITY OF SAN BERNARDINO  
RECOGNIZED OBLIGATION PAYMENT SCHEDULE 13-14A  
(July through December 2013)**

**(See Attachment)**

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PLAN FOR THE SUCCESSOR AGENCY'S USE OF  
 RPTTF RECEIVED FOR THE ROPS 13-14A PERIOD  
 (July through December 2013)

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<u>USES</u>	<u>AMOUNTS</u>
Debt Service (EOs 3, 4, 6-17 & 28):	\$9,112,354
Successor Agency Administrative Fee (EOs 32 & 83):	527,077
Property Maintenance Expenses (EO 38):	814,442
Litigation and Administrative Related (EOs 31 & 33-36):	194,123
Contribution to Replenishment of DSR Draws (EO 82):	<u>1,554,796</u>
Total Amount Distributed by Auditor-Controller:	\$12,202,792

**MAY 29, 2013 LETTER  
FROM THE  
CALIFORNIA DEPARTMENT OF FINANCE**

**(See Attachment)**

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REVISED

May 29, 2013

Mr. Allen Parker, City Manager  
City of San Bernardino Successor Agency  
300 North D Street  
6th Floor  
San Bernardino, CA 94218

Dear Mr. Parker:

Subject: Recognized Obligation Payment Schedule

This letter supersedes Finance's Recognized Obligation Payment Schedule (ROPS) letter dated May 12, 2013. 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 13-14A) to the California Department of Finance (Finance) on March 28, 2013, for the period of July through December 2013. 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 May 17, 2013.

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 2, 12, and 13 – Payments for Lease Revenue Bonds totaling \$3,442,750. These bonds are secured through lease payments of the City of San Bernardino (City) and/or other third parties. Based on the documentation provided by the Agency, there is no requirement to fund these bond payments through tax increment. Therefore, these line items were determined to be ineligible for Redevelopment Property Tax Trust Fund (RPTTF) funding. However, the Agency is approved to use funding from other funding sources; specifically, the lease payments received by the Agency from the City and/or other third parties.

The Agency did not object to the denial of Item 2; therefore, Item 2 remains denied for RPTTF funding.

Finance does not object to Items 12 and 13 for RPTTF funding during the ROPS 13-14A period. During the Meet and Confer process, the Agency stated that the former RDA and the third parties had separate Standby Loan Agreements for these bonds whereby the former RDA would secure payment of the debt service if lease revenues were insufficient. While the bond documents provided reference the Standby Loan Agreements, the Agency did not provide these agreements for review. However, to ensure sufficient funds are available to meet the debt service payments, Finance will

approve these items for the ROPS 13-14A period and will be reviewing the Standby Loan Agreements during the ROPS 13-14B period to determine if the Agency is, in fact, responsible for securing payment of the debt service if lease revenues are insufficient. The Agency will also have to provide information demonstrating that the third parties are not making the necessary payments.

- Item 24 – San Bernardino Building Tax Sharing Agreement in the amount of \$1,868,505. Finance no longer denies this item. The item was initially denied as the Agency did not provide an executed agreement. During the Meet and Confer process, the Agency provided the executed copy. Therefore, this item is an enforceable obligation and is eligible for RPTTF funding.
- Item 40 – Watson OPA in the amount of \$400,000 for the ROPS 13-14A period. Finance no longer denies this item. The total amount of the agreement is for \$999,203 and the Agency reported actual expenditures of \$780,000 from bond proceeds in the January through June 2012 period. In the January through December 2013 period, the Agency requested \$400,000 in RPTTF funding and Finance did not deny the item. However, during the Meet and Confer process, the Agency provided accounting records showing actual expenditures \$269,139 for all ROPS periods. Therefore, this item is eligible for RPTTF funding.
- Item 44 and 46 – Housing Monitoring Services and Housing Loan totaling \$497,500. Finance continues to deny these items. HSC section 34176 (a) (1) states if a city, county, or city and county elects to retain the authority to perform housing functions previously performed by a RDA, all rights, powers, duties, obligations, and housing assets shall be transferred to the city, county, or city and county. Since the City assumed the housing functions, the obligations associated with these functions are the responsibility of the housing successor. Therefore, these items are not enforceable obligations and are not eligible for RPTTF funding.

In addition, per Finance's ROPS letter dated May 17, 2013, the following items not disputed by the Agency continue to be denied:

- Item Nos. 1 and 5 – Payments for Lease Revenue Bonds totaling \$22,449,808. Based on the documentation provided by the Agency these bonds are secured through lease payments of the City of San Bernardino (City). Additionally, the obligation to make debt service payment on these bonds is that of the City of San Bernardino (City), not the Agency. As a result, these items are not enforceable obligations and not eligible for funding.
- Item No. 21 – Carousel Mall Note in the amount of \$16,586,000; \$336,000 payable from RPTTF, and \$16.25 million payable from Other Funds. According to the documentation provided, the maturity date of the obligation was May 3, 2012. Therefore, this line item is not an enforceable obligation and is not eligible for RPTTF funding or funding from Other Funds.
- Item No. 26 – Woolworth Building Installment Note in the amount of \$506,637. The amendment to the installment note only extended the agreement through January 1, 2013, and does not indicate a continuation of the obligation past that period. Therefore, this line item is not an enforceable obligation and is not eligible for RPTTF funding.

- Item No. 39 – Construction Management Services contract in the amount of \$45,000. HSC section 34163 (b) prohibits a redevelopment agency (RDA) from entering into a contract with any entity after June 27, 2011. It is our understanding that contracts for this line item was awarded after June 27, 2011. Therefore, this line item is not an enforceable obligation and is not eligible for RPTTF funding. Additionally if this was for project management costs, it is unclear for what approved ROPS project this is for.
- Item Nos. 63 through 75, 77, and 79 – Regal Cinema and Theatre Square Project contracts with various third parties totaling \$4,211,001; payable from Other Funds. The former RDA is neither a party to the contract nor responsible for payment of the contract. Additionally, these items were denied as an inclusion to the ROPS for the period January through June 2013, and that decision was later upheld through the Meet and Confer process in our letter dated December 18, 2012. Finance continues to deny these line items as enforceable obligations.
- Item Nos. 76, 78, and 80 – Professional Services contracts totaling \$32,474. The former RDA is neither a party to the contracts nor responsible for the payment of the contracts. Therefore, these line items are not enforceable obligations and are not eligible for RPTTF funding.

The Agency's maximum approved Redevelopment Property Tax Trust Fund (RPTTF) distribution for the reporting period is \$12,219,402 as summarized below:

<b>Approved RPTTF Distribution Amount</b>	
<b>For the period of July through December 2013</b>	
Total RPTTF funding requested for obligations	\$ 20,645,999
Minus: Six-month total for items denied or reclassified as administrative cost	
Item 1	793,298
Item 2	10,000
Item 5	870,188
Item 21	336,000
Item 26	506,637
Item 39	35,000
Item 44	32,250
Item 46	400,000
Item 78	4,953
Item 80	16,813
Item 83*	71,621
Total approved RPTTF for enforceable obligations	<u>\$ 17,569,239</u>
Plus: Allowable RPTTF distribution for ROPS 13-14A administrative cost	527,077
Minus: ROPS II Prior Period Adjustment	<u>(5,876,914)</u>
<b>Total RPTTF approved for distribution:</b>	<b>\$ 12,219,402</b>

\*Reclassified as administrative cost

Pursuant to HSC Section 34186 (a), successor agencies were required to report on the ROPS 13-14A form the estimated obligations and actual payments (prior period adjustments) associated with the July through December 2012 period (ROPS II). Based on our review of the Agency's prior period adjustment reporting, the Agency used distributed RPTTF for non-

approved ROPS items. Pursuant to HSC 34177 (a) (3) only those payments listed in the Recognized Obligation Payment Schedule may be made by the successor agency from the funds specified in the ROPS. Furthermore, pursuant to HSC section 34178 (a), the Agency or oversight board is not allowed to restore funding for an obligation that was denied by Finance. The table below delineates the payments that were not authorized.

<b>ROPS II Expenditures Made without Finance Approval</b>	
<b>As reported by Agency on Prior Period Payment worksheet</b>	
Form A, Item 14.1	\$ 651,996
Form A, Item 21	\$ 330,000
Form A, Item 86	\$ 711,485
Form A, Item 89	\$ 4,183,433
<b>Total unauthorized payments from RPTTF</b>	<b>\$ 5,876,914</b>

As a result of our review, Finance is hereby adjusting the prior period adjustment as reported on the ROPS 13-14A form to accurately reflect only those payments that were authorized by Finance on the Agency's ROPS II form. To the extent any of the adjusted amounts are related to enforceable obligations, the Agency should list those obligations on a subsequent ROPS for review and approval by Finance. The total prior period adjustment, as calculated by Finance is \$5,876,914.

Finance further notes that it appears the Agency paid unallowable obligations that are subordinated to RDA bond debt service payments in the ROPS II period. According to County Auditor-Controller reports for the ROPS II period, the Agency received sufficient funding to cover all debt service payments for that period. As such, the Agency should not have used bond reserves in order to make debt service payments. Specifically, the Agency was distributed \$11,165,764 during the ROPS II period and approved enforceable obligations by Finance totaled \$12,857,031. Of the approved enforceable obligation amount, debt service only totaled \$9,930,335. This was \$1,235,429 less than what was actually distributed to the Agency. Pursuant to HSC 34183 (a) (2) (A) the Agency was required to make bond payments the first priority for payment from distributed RPTTF.

Finally, Finance notes that the Agency's available RPTTF for the ROPS 13-14A period, as calculated by the County Auditor-Controller is estimated to be \$12,110,904. The Agency is approved to receive \$12,219,402 in RPTTF. Based on this information, the Agency will be short \$108,498 during the upcoming period. Nevertheless, when including the funding that is available from the prior period adjustment, sufficient funding is available to pay all bond debt service obligations of the Agency, including replenishing the unnecessary draw down of the Agency's bond reserves. Finance reiterates that upon distribution of the RPTTF the Agency is required to follow the priority of payments as outlined in the statutes.

Please refer to the ROPS 13-14A schedule that was used to calculate the approved RPTTF amount:

[http://www.dof.ca.gov/redevelopment/ROPS/ROPS 13-14A Forms by Successor Agency/](http://www.dof.ca.gov/redevelopment/ROPS/ROPS%2013-14A%20Forms%20by%20Successor%20Agency/).

This is Finance's final determination related to the enforceable obligations reported on your ROPS for July 1 through December 31, 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 denied on this ROPS or a preceding ROPS. The only exception is for those items that have

Mr. Allen Parker  
May 29, 2013  
Page 5

received a Final and Conclusive determination from Finance pursuant to HSC 34177.5 (i). Finance's review of items that have received a Final and Conclusive determination 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 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.

To the extent proceeds from bonds issued after December 31, 2010, exist and are not encumbered by an enforceable obligation pursuant to 34171 (d), HSC section 34191.4 (c)(2)(B) requires these proceeds be used to defease the bonds or to purchase those same outstanding bonds on the open market for cancellation.

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  
Ms. Vanessa Doyle, Auditor Controller Manager, County of San Bernardino  
California State Controller's Office