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MEMORANDUM

DATE: July 18, 2012

CLIENT/MATTER: 1943-09

TO: Jeff Briltz, City Manager
City of Lemoore

CC: Judy Holwell, Project Manager

FROM: Laurie Avedisian

RE: AB 1484 and Redevelopment

This memorandum provides a summary and practical advice regarding the major provisions of AB 1484, including upcoming deadlines.

July payment

By now, the Successor Agency ("SA") should have received notice of whether a July "True-Up" payment was due. If such a payment was due, it should have already been paid. This payment should equal the amount received by the former Redevelopment Agency in December or January, less the amount the Department of Finance ("DOF") approved on the January – June 2012 ROPS as being payable from the RPTTF. For many SAs, the CAC ("CAC") deducted this amount from the June distribution so that no payment was due by the SA in July.

Housing Assets

The Successor Housing Agency must submit a list of housing assets to DOF by **August 1, 2012**. The list must include an explanation of how the assets meet the modified definition of "housing asset" found in Section 34176(e). For example, "housing asset" includes real property acquired for low-and-moderate-income housing purposes with any source of funds, and loans or grants receivable such as down payment assistance programs. Please see Section 34176(e) (attached) for a complete definition of housing assets. DOF will provide a form for the list of housing assets. We are monitoring the DOF website and will notify you when the form becomes available. Since the deadline is fast-approaching, we recommend that you begin gathering this information right away. DOF has 30 days from the date of receipt of the list to object to any of the assets or transfers of assets on the list.

Low and Moderate Income Housing Asset Fund

The Successor Housing Agency must also create a new fund called the Low and Moderate Income Housing Asset Fund. Any funds transferred to the Successor Housing Agency, and funds generated from housing assets, shall be placed in the Low and Moderate Income Housing Asset Fund. In addition, repayments to the Low and Moderate Income Housing Fund and 20% of loan repayments to the City shall be paid into the Low and Moderate Income Housing Asset Fund. Funds in this account shall be used in accordance with the housing-related provisions of the Community Redevelopment Law.

Low and Moderate Income Housing Fund ("LMI fund")

AB 1484 provides that, as of the effective date of AB 26, no new deposits should have been made to the LMI fund. Accordingly, it appears to retroactively direct that there should not have been a set-aside for LMI from the December 2011/January 2012 tax increment distribution. We do not recommend changing previous allocations at this time. We believe this issue will be resolved during the Due Diligence Review, discussed below.

Use of LMI Bond Proceeds

The Successor Housing Agency may designate the use of bond proceeds that remain after satisfaction of enforceable obligations, provided the bonds were issued for affordable housing purposes prior to January 1, 2011 and were backed by the LMI fund. The Successor Housing Agency must provide notice to the SA of any designations of such funds at least 20 days before the deadline for submission of the ROPS. The review of these designations by the SA, OB and DOF shall be limited to a determination that the designations are consistent with bond covenants and that there are sufficient funds available. The deadline to place designations on the January-June 2013 ROPS is **August 10, 2012**.

ROPS

The OB-approved ROPS for the period of January – June 2013 is due to DOF by **September 1, 2012**, which means it must be approved by the Oversight Board in August. City Council approval, acting as Successor Agency, does not appear to be required by AB 1484. However, some SAs may wish to seek City Council approval as a practical matter. Such approval should be sought prior to OB approval. Even if City Council approval is not sought, the SA is advised to keep the City Council apprised of SA activity in the form of periodic updates. The SA must submit an electronic copy of the ROPS to the county administrative officer, the CAC and the DOF at the same time it submits the ROPS to the OB for approval. Once approved by the OB, the SA must send an electronic copy of the approved ROPS to DOF.

If an SA does not meet the September 1st deadline, the **City** will be subject to a $10,000 per day penalty for each day the ROPS is late. Additionally, if the ROPS is 10 days late, the maximum administrative cost allowance for that period is reduced by 25%. If the SA fails to submit the ROPS within 5 days of the date upon which the ROPS is to be used to determine property tax allocations, DOF may determine whether any amount should be withheld by the CAC to cover

SA enforceable obligations pending approval of a ROPS, with the remainder being distributed to the taxing entities.

Under AB 26, DOF had to notify an SA within 3 days of receipt of its ROPS if DOF intended to review the ROPS. Following the notice, DOF had an additional 10 days to conduct the review. Under AB 1484, DOF now has an automatic 45 days to review the ROPS. Within 5 business days of DOF's determination, the SA may request additional review and an opportunity to meet and confer on disputed items.

Beginning with the ROPS for July – December 2013, SAs must submit an OB-approved ROPS to DOF 90 days before the date of property tax distribution.

The CAC now has the ability to review the ROPS and object to the inclusion of items as enforceable obligations or the proposed funding source for items.

Agreed-Upon Procedures Audit (AUP Audit)

The deadline for completion of the AUP audit has been extended from July 1, 2012 to October 1, 2012. The purpose of this audit is to establish the Redevelopment Agency's assets and liabilities, passthrough payment obligations, and any indebtedness incurred by the Redevelopment Agency pursuant to the Initial ROPS. The CAC must provide a copy of the audit to the Controller and DOF by October 5, 2012.

Due Diligence Review

SA must employ a licensed accountant approved by the CAC, and with experience in local government accounting, to conduct a due diligence review to determine the unobligated balances available for transfer to taxing entities. The cost of this review should be included in the next ROPS. The review will include the dollar value of assets transferred from the former RDA to the SA on or about February 1, 2012. The review will also include transfers of assets and cash by the RDA or SA between January 1, 2011 and June 30, 2012 and the purpose for each transfer including documentation of the enforceable obligation requiring the transfer. In addition, the review will provide expenditure and revenue accounting information, and identify transfers and funding sources for the 2010-11 and 2011-12 fiscal years that reconciles balances, assets, and liabilities of the SA on June 30, 2012 to those reported to the Controller for the 2009-10 fiscal year. Finally, the review will include an accounting for the Low and Moderate Income Housing Fund and for all other funds and accounts, including the total value of each fund as of June 30, 2012 to determine the amounts available for distribution to the taxing entities.

SA must provide the results of the review for the LMI fund to the OB, CAC, Controller, and DOF by **October 1, 2012**. Although the ROPS is due by September 1, AB 1484 requires the SA to submit a copy of the ROPS to the county administrative officer, the CAC and the DOF at the same time the SA submits the due diligence review to the OB for review. Upon receipt of the review, OB shall convene a public comment session to take place at least five (5) business days before the OB votes to approve the review. The OB must approve the review and transmit to DOF and CAC the determination of the amount of cash and cash equivalents that are available for disbursement to taxing entities from the LMI fund by **October 15, 2012**. For OBs with monthly meetings, this will either require a special meeting, or completion of the review in sufficient time to allow the OB to hold public comment at one regular meeting (i.e., August or

September), and a vote at the next regular meeting (i.e., September or October), prior to October 15, 2012.

SA must provide the results of the review for all other funds to the OB, CAC, Controller, and DOF by **December 15, 2012**. Upon receipt of the review, the OB must hold a public comment session at least five (5) business days prior to holding a vote. The OB must approve the review of all other funds and transmit the determination of the amount of cash and cash equivalents that are available for disbursement to taxing entities to DOF and the CAC by **January 15, 2013**. This will also require a special meeting or planning in advance.

OB may authorize SA to retain certain assets or funds such as amounts that are legally restricted as to purpose and cannot be provided to taxing entities. This may include bond proceeds, grant funds, or funds provided by other governmental entities that place conditions on their use. OB may also authorize retention of assets that are not cash or cash equivalent such as physical assets, balances that are legally or contractually dedicated or restricted for the funding of an enforceable obligation, and current balances that are needed to satisfy obligations that will be placed on the ROPS for the current fiscal year.

DOF must complete its review of the Due Diligence Review for the LMI fund by **November 9, 2012** and by **April 1, 2013** for all other funds. SA must transmit to CAC amount of funds required by DOF within five (5) working days of receipt of notice from DOF. If SA fails to pay the full amount due, funds may be recovered from the recipient of such funds by way of offset of sales and use tax or property tax allocations for public agencies, or demand for return of funds from a private entity, with a 10% penalty plus interest if the private entity does not comply within 60 days. The city is also subject to offset of sales and use tax revenue and/or reduction in property tax allocations. Future allocations to the SA may also be reduced.

Finding of Completion ("Golden Ticket")

Upon payments of the amounts available for disbursement to other taxing entities from the LMI and all other funds, and following payment of the July "True-Up" payment as discussed above, the DOF will issue a "Finding of Completion" to the SA. As a practical matter, this is expected to occur in or around April of 2013. The Finding of Completion is referred to as the "Golden Ticket" by redevelopment practitioners because it confers the following benefits on the SA:

1. Loan agreements between the City and former RDA shall be deemed enforceable obligations provided that the OB makes a finding that the loan was for legitimate redevelopment purposes.

   However, repayment of such loans cannot be made prior to the 2013-14 fiscal year and payments are restricted to one-half of the increase in payments to the taxing entities in any given fiscal year. Repayments shall first be used to pay any amounts owed to the former LMI fund (i.e., for SERAF payments). Such amounts shall be paid to the Low and Moderate Income Housing Asset Fund. In addition, 20% of repayments shall be paid to the Low and Moderate Income Housing Asset Fund after all amounts owed to the LMI fund have been paid. The interest rate is also limited.

2. Bond proceeds derived from bonds issued on or before December 31, 2010 shall be used for the purposes for which the bonds were sold. Bond proceeds should not be spent prior to receiving the "golden ticket."

3. Disposition and use of assets shall be made pursuant to a long-range property management plan, as explained below.

Asset Disposition

The requirement to expeditiously dispose of real property has been suspended, except as to transfers for governmental use, until (1) an SA receives its "golden ticket" and (2) DOF approves a long-range property management plan (the "Plan"). The SA must prepare a Plan that addresses the disposition and use of real properties of the former RDA. The Plan must be submitted to the OB and DOF for approval no later than six months following the issuance to the SA of the Finding of Completion. Property shall not be transferred to a SA, city or county unless the Plan has been approved by the OB and the DOF.

It is unclear whether DOF will approve any asset transfers prior to approval of a Plan. However, if a SA has specific assets it would like to sell right away, we recommend seeking OB then DOF approval. The OB meeting will require 10 days' advance notice to the public and DOF will have 60 days to review the transaction.

Following approval of the Plan by DOF, the SA must establish a Community Redevelopment Property Trust Fund where it will hold the former RDA's real properties to be administered in accordance with the Plan.

New Procedural Requirements for Oversight Board Action

The entire agenda packet for each OB meeting must be sent to the DOF, CAC, and county administrative officer at the time it is made available to the OB. All OB action must be taken by resolution. Written notice and information about all actions taken by an OB shall be provided to DOF by electronic means in a manner of DOF's choosing. We will provide an update if and when DOF releases instructions for electronic submission. An action shall become effective 5 business days after notice to DOF unless DOF requests a review. If DOF request a review, it shall have 40 days from the date it requests review to approve OB action or return it to the OB for reconsideration. OB action shall not be effective until approved by DOF.

Disposition of assets, including transfer of housing assets to successor housing entity, require 10 days' prior notice to the public. AB 1484 does not specify whether that requires publication.

Approval of the Due Diligence Review, both for the LMI fund and for all other funds, requires a public comment session at least five days prior to the OB vote.

Miscellaneous

The SA is a separate legal entity. Any existing brownfield cleanup plans and liability limits authorized under the Polanco Redevelopment Act shall be transferred to the SA and may be transferred to the Successor Housing Agency at that entity's request. The SA may create new enforceable obligations to conduct the work of winding down the RDA including hiring staff,

acquiring necessary professional administrative services and legal counsel, and procuring insurance. The City can loan money to the SA for administrative costs, enforceable obligations, or project-related expenses. These funds must be reflected on the ROPS. An enforceable obligation is created for the repayment of such loans.

The League of Cities published an accurate summary of upcoming deadlines which is also attached for your reference.

This is not intended to be a comprehensive analysis of AB 1484, but provides an overview of the major provisions. Please contact us to discuss issues specific to your Successor Agency. Thank you.

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