



May 17, 2013

Ms. Wendy Cosin, Deputy Planning Director  
City of Berkeley  
2118 Milvia Street, 3rd Floor  
Berkeley, CA 94704

Dear Ms. Cosin:

Subject: Recognized Obligation Payment Schedule

This letter supersedes California Department of Finance's (Finance) Recognized Obligation Payment Schedule (ROPS 13-14A) letter dated April 13, 2013. Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of Berkeley Successor Agency (Agency) submitted a ROPS 13-14A to Finance on February 27, 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 April 25, 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.

- Item No. 3 – \$1 Million Bond – City Loan in the amount of \$554,265. Finance continues to deny this item. The total outstanding obligation represents accrued interest on a \$1 million bond issued on December 1, 1997 between the City of Berkeley (City) and the former redevelopment Agency (RDA). Finance reviewed this item during the January through June 2013 ROPS (ROPS III) period as a total outstanding obligation of \$1.6 million and denied the item although no payment was being requested for the ROPS III period. A Meet and Confer was held for ROPS III on November 29, 2012. In its December 18, 2012 ROPS III determination letter, Finance stated that the item would be re-reviewed during the next ROPS period since there was no funding requested at the time.

Finance re-reviewed this item during the ROPS 13-14A period to determine if it meets the definition of an enforceable obligation. The bond indenture was between the RDA and the City and identifies the City as the sole bondholder. HSC section 34171 (e) defines indebtedness obligations as bonds, notes, and certificates of participation issued or delivered by the RDA to third party investors or bondholders. The City is not considered a third party, and therefore this item does not meet the definition of indebtedness. Additionally, HSC section 34171 (d) (2) states that agreements, contracts, or arrangements between the city that created the RDA and the former RDA are not enforceable, unless issued within two years of the RDA's creation date or for issuance of indebtedness to third-party investors or bondholders. Therefore, the City's

demand letter dated January 15, 2013 for the amount of \$1,554,265 does not obligate the Agency to make payments to the City. Consequently, the Agency's request for the \$227,133 interest payment is not permitted and is not eligible for funding from the Redevelopment Property Tax Trust Fund (RPTTF).

- Item Nos. 15 and 17 – Contract for professional services for the Oversight Board and for the annual audit totaling \$15,000. Finance continues to reclassify these items as an administrative cost. These items are general administrative expenses that do not fall into any of the following categories that are specifically excluded from the administrative cap as defined by HSC section 34171 (b):
  - Any litigation expenses related to assets or obligations.
  - Settlements and judgments.
  - 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.

Although this reclassification increased administrative costs to \$140,000, the administrative cost allowance has not been exceeded.

- Item No. 16 – Contract for legal services for litigation in the amount of \$40,000. Finance no longer reclassifies this item as an administrative expense. Therefore, this item is eligible for RPTTF funding on this ROPS.
- Item No. 18 – Savo Island Loan Payable in the amount of \$759,600. Finance continues to deny this item. HSC section 34171 (d) (2) states that agreements, contracts, or arrangements between the city that created the RDA and the former RDA are not enforceable. Therefore, this item continues to be denied as an enforceable obligation and not eligible for RPTTF funding on this ROPS.

In addition, per Finance's ROPS letter dated April 13, 2013, the following items continue to be denied and were not contested by the Agency:

- Items Nos. 20 through 28 – Various Capital Projects funded with \$518,208 in bond proceeds. HSC section 34163 (b) prohibits a RDA from entering into a contract with any entity after June 27, 2011. It is our understanding that contracts for these line items have not yet been awarded. Pursuant to HSC section 34191.4 (c), Agency's request to use bond funds for these obligations may be allowed once the Agency receives a Finding of Completion from Finance and if the bond proceeds proposed for use were derived from bonds issued prior to January 1, 2011.

Except for items denied in whole or in part as enforceable obligations, Finance is not objecting to the remaining items listed on your ROPS 13-14A. Obligations deemed not to be enforceable shall be removed from your ROPS.

The Agency's maximum approved Redevelopment Property Tax Trust Fund (RPTTF) distribution for the reporting period is: \$580,293 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	\$ 849,632
Minus: Six-month total for items denied or reclassified as administrative cost	
Item 3	277,133
Item 15* and 17*	15,000
Items 18	29,040
Total approved RPTTF for enforceable obligations	\$ 528,459
Plus: Allowable RPTTF distribution for ROPS 13-14A administrative cost	140,000
Minus: ROPS II prior period adjustment	(88,166)
<b>Total RPTTF approved for distribution:</b>	<b>\$ 580,293</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. HSC Section 34186 (a) also specifies that the prior period adjustments self-reported by successor agencies are subject to audit by the county auditor-controller (CAC) and the State Controller. The amount of RPTTF approved in the above table includes the prior period adjustment resulting from the CAC's audit of the Agency's self-reported prior period adjustment.

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 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.

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Please direct inquiries to Wendy Griffe, Supervisor or Medy Lamorena, Lead Analyst at (916) 445-1546.

Sincerely,



STEVE SZALAY  
Local Government Consultant

cc: Ms. Danita Hardaway, Associate Management Analyst, City of Alameda  
Ms. Carol S. Orth, Tax Analysis, Division Chief, Alameda County  
California State Controller's Office