



November 14, 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

Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of Berkeley Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule (ROPS 13-14B) to the California Department of Finance (Finance) on September 30, 2013 for the period of January through June 2014. Finance has completed its review of your ROPS 13-14B, which may have included obtaining clarification for various items.

HSC section 34171 (d) defines enforceable obligations. Based on a sample of line items reviewed and application of the law, the following do not qualify as enforceable obligations for the reasons specified:

- Item No. 3 – \$1 Million Bond City Loan in the amount of \$554,265. Finance continues to deny this item because the bond indenture was between the RDA and the City identifying the City as the sole bondholder. HSC section 34171 (d) (2) states that “enforceable obligation” does not include any agreements, contracts, or arrangements between the city ... that created the redevelopment agency and the former redevelopment agency.” Therefore, this item is not an enforceable obligation and not eligible for Redevelopment Property Tax Trust Fund (RPTTF) funding.
- Item No. 12 – Contract for Consulting Services in the amount of \$5,000. The Personal Services Contract with a third party was only valid through December 31, 2013. The Agency was not able to demonstrate this contract was extended beyond December 31, 2013. Therefore, this item is not an enforceable obligation and not eligible for RPTTF funding at this time.
- Item No. 16 – Contract for Consulting Services in the amount of \$30,000. The Agency was approved for and received \$40,000 in RPTTF funding during the July 1, 2013 through December 31, 2013 ROPS period (ROPS 13-14A) for this obligation. The Agency provided a contract dated February 19, 2013 that was subsequently amended on August 1, 2013 and a second time on August 27, 2013 limits the cost of services to \$60,000. Therefore, the Agency may request \$20,000 for the remaining balance; \$30,000 of the requested \$50,000 is not eligible for RPTTF funding.

- 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 is not an enforceable obligation and not eligible for RPTTF funding.

Pursuant to HSC Section 34186 (a), successor agencies were required to report on the ROPS 13-14B form the estimated obligations and actual payments (prior period adjustments) associated with the January through June 2013 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 below table includes the prior period adjustment resulting from the CAC’s audit of the Agency’s self-reported prior period adjustment.

Based on a review of the CAC prior period adjustments, Finance notes the Agency expended \$1,000,000 in balances from a capital improvement fund for Item No. 3 – \$1 million Bond City Loan during the January through June 2013 Recognized Obligation Payment Schedule (ROPS III). Finance denied this item on ROPS III and noted there was no funding requested for the ROPS III period. After further review of Item No. 3 during ROPS 13-14A, Finance continued to deny this item as an enforceable obligation. Therefore, the Agency has not been authorized to expend funds for this item.

Except for the items denied in whole or in part as enforceable obligations, Finance is not objecting to the remaining items listed on your ROPS 13-14B. If you disagree with the determination with respect to any items on your ROPS 13-14B, you may request a Meet and Confer within five business days of the date of this letter. The Meet and Confer process and guidelines are available at Finance’s website below:

[http://www.dof.ca.gov/redevelopment/meet and confer/](http://www.dof.ca.gov/redevelopment/meet_and_confer/)

The Agency’s maximum approved RPTTF distribution for the reporting period is \$610,459 as summarized below:

Approved RPTTF Distribution Amount For the period of January through June 2014	
Total RPTTF requested for non-administrative obligations	830,192
Total RPTTF requested for administrative obligations	110,000
Total RPTTF requested for obligations	\$ 940,192
Total RPTTF requested for non-administrative obligations	830,192
<u>Denied Items</u>	
Item No. 3	(277,133)
Item No. 12	(5,000)
Item No. 16	(30,000)
Item No. 18	(17,600)
	(329,733)
Total RPTTF approved for non-administrative obligations	500,459
Total RPTTF approved for administrative obligations	110,000
Total RPTTF approved for obligations	610,459
ROPS III prior period adjustment	-
Total RPTTF approved for distribution	\$ 610,459

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

[http://www.dof.ca.gov/redevelopment/ROPS/ROPS 13-14B Forms by Successor Agency/](http://www.dof.ca.gov/redevelopment/ROPS/ROPS_13-14B_Forms_by_Successor_Agency/).

Absent a Meet and Confer, this is Finance's final determination related to the enforceable obligations reported on your ROPS for January 1 through June 30, 2014. This determination applies only to items where funding was requested for the six month period. 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 HSC section 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 Beliz Chappuie, Supervisor or Todd Vermillion, Lead Analyst at (916) 445-1546.

Sincerely,



JUSTYN HOWARD
Assistant Program Budget Manager

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