



November 14, 2013

Mr. Scott Hanin, City Manager
City of El Cerrito
10890 San Pablo Avenue
El Cerrito, CA 94530

Dear Mr. Hanin:

Subject: Recognized Obligation Payment Schedule

Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of El Cerrito 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. 5 – 2004 Housing Tax Allocation Bonds in the amount of \$30,000. The Agency historically requests the next period's debt service because the payments are due January 1 and July 1, and must be received by the trustee in a timely manner. The Agency requested \$203,360 for Redevelopment Property Tax Trust Fund (RPTTF) funding; however, the total amount due July 1 is \$173,360. HSC section 34171 (d) (1) (A) allows agencies to hold a reserve for debt service payments when required by the bond indenture, or when the next property tax allocation will be insufficient to pay all obligations due under the provisions of the bond for the next payment due in the following half of the calendar year. Based on our review of the bond indentures, we did not note any requirement to create such reserves. Additionally, based on the history of the Agency's RPTTF distributions, it is our understating the next property tax allocation will be sufficient to make debt service payments due for this item. Therefore, the requested RPTTF funding has been adjusted by \$30,000 (\$203,360-\$173,360) to \$173,360.
- Item No. 18 – Eden Housing Loan Agreement (Agreement) in the amount of \$250,000. Finance continues to deny this item; the Agreement was previously denied and upheld during the ROPS period January through June 2013 (ROPS III) Meet and Confer determination letter dated December 18, 2012. Finance determined that according to the loan agreement, the Agency shall not be obligated to disburse any amounts in excess of \$100,000 until a Disposition and Development Agreement (DDA) is entered into by the Agency. It is our understanding that a DDA has not yet been entered into by the Agency and pursuant to HSC 34163 (b), an agency is prohibited from entering into any agreement

after June 27, 2011. ABx1 26 requires agencies to expeditiously wind down the affairs of the dissolved redevelopment agencies (RDAs) and provides successor agencies with limited authority only to the extent needed to implement the wind down of RDA affairs. Further, Section 2.08 subsection (f) of the loan agreement states that the agreement may be terminated if "State action limits or otherwise adversely affects redevelopment agency financing, redevelopment projects and/or redevelopment agencies." Therefore, the item is not an enforceable obligation and is not eligible for RPTTF funding.

- Item No. 19 – Cooperation Agreement (Agreement) with El Cerrito Municipal Services Corporation (MSC) in the amount of \$3,287,000. Finance continues to deny this item; the Agreement was previously denied and upheld during the ROPS period January through June 2013 (ROPS III) Meet and Confer determination letter dated December 18, 2012, and during the ROPS period July through December 2013 (ROPS 13-14A) Meet and Confer determination letter dated May 17, 2013. Finance denied the item as 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.

MSC is considered part of the City per HSC section 34167.10 (a) (3). The Agency contends the MSC is a separate and distinct entity from the City. However, the City of El Cerrito's (City) Comprehensive Annual Financial Report for the Year Ended June 30, 2011, states that "the City, the El Cerrito Redevelopment Agency, the El Cerrito Public Financing Authority, and the El Cerrito Municipal Services Corporation which are legally separate but are component units of the City because they are controlled by the City, which is financially accountable for their activities." Per HSC section 34167.10 (c), it shall not be relevant that the entity is formed as a separate legal entity, nonprofit corporation, or otherwise, or is not subject to the constitution debt limitation otherwise applicable to a city, county, or city and county. Therefore, the MSC is considered part of the City. As noted above, HSC section 34171 (d) (2) applies; therefore this item is not an enforceable obligation and is not eligible for RPTTF funding.

- Item No. 21 – City Litigation Cost/Cash Flow Loan Agreement in the amount of \$125,000. HSC section 34173 (h) allows the City, at its discretion, to loan funds to successor agencies for administrative costs, enforceable obligations, or project-related expenses approved by the Oversight Board. However, this obligation includes costs for litigation expenses and an anticipated RPTTF shortfall distribution for the current ROPS period. It is unknown at this time whether or not a loan will be necessary for an RPTTF shortfall. And, while litigation expenses are considered enforceable obligations; the Agency must list the item on a ROPS for Finance review and approval before the obligation can be considered enforceable, and the necessity of a loan can be established. Additionally, it is our understanding the litigation has not been filed, and no expenses have been incurred. HSC 34163 (b) prohibits RDA's from allocating funds for unknown contingencies. Therefore, this line item is not an enforceable obligation and is not eligible for RPTTF funding.

During our review, which may have included obtaining financial records, Finance determined the Agency possesses funds that are required to be used prior to requesting RPTTF. Pursuant to HSC section 34177 (l) (1) (E), RPTTF may be used as a funding source, but only to the extent no other funding source is available or when payment from property tax revenues is required by an enforceable obligation.

Therefore, the funding source for the following item has been reclassified to Other Funds and in the amount specified below:

- Item No. 14 – Due Diligence Review cost in the amount of \$12,868. The Agency requested to retain \$12,868 in additional RPTTF funding for this item; the Agency was approved to spend \$30,000 during ROPS for the period January through June 2013 (ROPS III) period, however, the Agency did not receive sufficient RPTTF. Subsequently, the Agency received a shortfall loan from the City. The Agency intends to use funds remaining from the shortfall loan to fund this item during ROPS 13-14B. Therefore, Finance is approving the use of Other Funds in the amount of \$12,868 for Item No. 14.

Pursuant to HSC Section 34186 (a), successor agencies were required to report the estimated obligations and actual payments (prior period adjustments) associated with the January through June 2013 period. The amount of RPTTF approved in the table below includes the prior period adjustment that was self-reported by the Agency. 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. Any proposed CAC adjustments were not received in time for inclusion in this letter. Therefore, the amount of RPTTF approved in the table below includes only the prior period adjustment that was self-reported by the Agency.

Except for the items denied in whole or in part as enforceable obligations or for the item that have been reclassified, 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/

The Agency’s maximum approved RPTTF distribution for the reporting period is \$1,982,918 as summarized below:

Approved RPTTF Distribution Amount For the period of January through June 2014	
Total RPTTF requested for non-administrative obligations	3,000,786
Total RPTTF requested for administrative obligations	-
Total RPTTF requested for obligations	\$ 3,000,786
Total RPTTF requested for non-administrative obligations	3,000,786
<u>Denied Items</u>	
Item No. 5	(30,000)
Item No. 18	(250,000)
Item No. 19	(600,000)
Item No. 25	(125,000)
	<u>(1,005,000)</u>
<u>Reclassified Items</u>	
Item No. 14	(12,868)
Total RPTTF approved for non-administrative obligations	1,982,918
Total RPTTF approved for administrative obligations	-
Total RPTTF approved for obligations	1,982,918
Self-Reported ROPS III prior period adjustment (PPA)	
Total RPTTF approved for distribution	\$ 1,982,918

Pursuant to HSC section 34177 (l) (1) (E), agencies are required to use all available funding sources prior to RPTTF for payment of enforceable obligations. Beginning with the ROPS 13-14B period, Finance required successor agencies to identify fund balances for various types of funds in its possession. During our ROPS 13-14B review, Finance requested financial records to support the fund balances reported by the Agency; however, Finance was unable to reconcile the financial records to the amounts reported. As a result, Finance will continue to work with the Agency after the ROPS 13-14B review period to properly identify the Agency's fund balances. If it is determined the Agency possesses fund balances that are available to pay approved obligations, the Agency should request the use of these fund balances prior to requesting RPTTF in ROPS 14-15A.

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%2013-14B%20Forms%20by%20Successor%20Agency/).

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 Nichelle Thomas, Supervisor or Susana Medina-Jackson, Lead Analyst at (916) 445-1546.

Sincerely,



JUSTYN HOWARD
Assistant Program Budget Manager

cc: Ms. Lori Trevino, Finance Manager/Special Projects, City of El Cerrito
Mr. Bob Campbell, Auditor-Controller, Contra Costa County
California State Controller's Office