



May 16, 2014

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

This letter supersedes the California Department of Finance's (Finance) Recognized Obligation Payment Schedule (ROPS) letter dated April 16, 2014. 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 14-15A) to Finance on March 3, 2014, for the period of July through December 2014. Finance issued a ROPS determination letter on April 16, 2014. 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 6, 2014.

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 Nos. 1, 2, 3 and 5 – Debt Service payments totaling \$1,063,616 for payments due July through December 2015. Finance no longer denies these items. The Agency has requested funds for debt service payments due January 1, 2015 and July 1, 2015. Of the amount requested, only \$351,016 is due July 1, 2015. Finance initially denied these items as HSC section 34171 (d) (1) (A) allows successor agencies to hold a reserve for debt service payments 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 further review during the Meet and Confer process, the Bond Indentures require all tax revenues in any Bond Year to be set aside as soon as they are available until sufficient funds to make the entire annual debt service payments are held in reserve. The "Bond Year" is defined as any twelve-month period beginning on July 2 in any year and ending on the next succeeding July 1. Pursuant to HSC section 34171 (d) (1) (A) reserves are also allowed when required by the bond indenture. Therefore, of the \$1,063,616 requested, \$712,600 (\$1,063,616 - \$351,016) to fund payments due for the first half of the calendar year is allowed.

Finance notes that pursuant to HSC section 34183 (a) (2) (A), debt service payments have first priority for payment from distributed RPTTF funding. As such, the additional \$712,600 requested to be held in reserve should be transferred upon receipt to the bond trustee(s) along with the amounts approved for the other ROPS 14-15A debt service

payments prior to making payments on any other approved ROPS items. Any requests to fund these items again in the ROPS 14-15B period will be denied unless insufficient RPTTF is received to satisfy both the debt service payments due during the ROPS 14-15A period and the reserve amounts requested in ROPS 14-15A for the ROPS 14-15B debt service payments.

- Item No. 21 – Litigation Costs/Cash Flow Loan Agreement in the amount of \$90,000. Finance no longer denies this item. Finance initially denied the item as a cash flow loan agreement pursuant to HSC section 34173 (h) that does not meet the criteria of enforceable obligation pursuant to HSC section 34171 (d). During the Meet and Confer process, the Agency clarified that this item is related to litigation costs to be paid as well as to be incurred. Therefore, this item is an enforceable obligation and is eligible for Redevelopment Property Tax Trust Fund (RPTTF) funding on this ROPS.
- Item No. 22 – 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 previous ROPS period Meet and Confer determination letters dated December 18, 2012 and December 17, 2013. Finance initially denied this item pursuant to HSC section 34163 (b), which states that an agency is prohibited from entering into any agreement after June 27, 2011. During the Meet and Confer process, the Agency contended that the City of El Cerrito (City) as Housing Successor has entered into the Disposition Development and Loan Agreement contemplated in the Predevelopment Loan Agreement (PLA) between the former Redevelopment Agency (RDA) and Eden Housing, Inc. dated May 17, 2011. However, the PLA has expired by its own terms. Pursuant to Section 1.1 – Definitions, the term of the agreement “shall commence on the Effective Date and shall terminate on the second...anniversary of the Effective Date, unless sooner terminated”; the effective date is May 17, 2011 and the second anniversary or termination date is May 17, 2013. Therefore, this item is not an enforceable obligation and is not eligible for RPTTF funding.
- Item No. 23 – 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 previous ROPS period Meet and Confer determination letters dated December 18, 2012, May 17, 2013, and December 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's 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. During the Meet and Confer process, the Agency continued to object to Finance's determination; however, no additional information or documents were provided. 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. 24 - San Pablo Avenue Streetscapes in the amount of \$431,599 is not an obligation of the Agency. Finance continues to deny this item. Finance denied this item because the former RDA is not a party to the agreements based on the City resolutions provided by the Agency; the agreements subject to the request were entered into by the City and various third parties. During the Meet and Confer process, the Agency contended that the former RDA had a long standing financial commitment to the City to fund certain infrastructure costs incurred by the City and the amount requested is related to the former RDA failing to meet its obligation to the City. However, 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 14-15A form the estimated obligations and actual payments (prior period adjustments) associated with the July through December 2013 period. The amount of RPTTF approved in the table below includes the prior period adjustment self-reported by the Agency. HSC section 34186 (a) also specifies 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 only includes the prior period adjustment self-reported by the Agency.

Except for items denied in whole or in part as enforceable obligations, Finance is not objecting to the remaining items listed on your ROPS 14-15A. The Agency's maximum approved RPTTF distribution for the reporting period is \$1,303,419 as summarized below:

Approved RPTTF Distribution	
For the period of July through December 2014	
Total RPTTF requested for non-administrative obligations	2,160,018
Total RPTTF requested for administrative obligations	125,000
Total RPTTF requested for obligations	\$ 2,285,018
Total RPTTF requested for non-administrative obligations	2,160,018
<u>Denied Items</u>	
Item No. 22	(250,000)
Item No. 23	(300,000)
Item No. 24	(431,599)
	(981,599)
Total RPTTF authorized for non-administrative obligations	\$ 1,178,419
Total RPTTF requested for administrative obligations	125,000
Total RPTTF authorized for administrative obligations	\$ 125,000
Total RPTTF authorized for obligations	\$ 1,303,419
ROPS 13-14A prior period adjustment	0
Total RPTTF approved for distribution	\$ 1,303,419

Please refer to the ROPS 14-15A schedule that was used to calculate the approved RPTTF amount:

<http://www.dof.ca.gov/redevelopment/ROPS>

This is Finance's final determination related to the enforceable obligations reported on your ROPS for July 1 through December 31, 2014. This determination only applies 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 section 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 Evelyn Suess, Dispute Resolution Supervisor, or Mary Halterman, 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