

December 18, 2012

Ms. Debbie Potter, Manager
Housing Development and Programs
Alameda Housing Authority
701 Atlantic Avenue
Alameda, CA 94501

Dear Ms. Potter:

Subject: Recognized Obligation Payment Schedule

This letter supersedes Finance's Recognized Obligation Payment Schedule (ROPS) letter dated October 12, 2012. Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of Alameda Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule (ROPS III) to the California Department of Finance (Finance) on August 28, 2012 for the period of January 1 through June 30, 2013. Finance issued its determination related to those enforceable obligations on October 12, 2012. Subsequently, the Agency requested a Meet and Confer session on one of the items denied by Finance. The Meet and Confer session was held on November 26, 2012.

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 item being disputed.

- Item No. 15 – Loan/Revenue Bond Payments totaling \$334,494. Finance is no longer denying the item. The Agency contends the item is an enforceable obligation because the payments are due to the trustee to meet debt service on a 2006 bond issue. Based on additional information provided, Finance concurs that this is an indebtedness obligation of the former redevelopment agency (RDA) related to a CRA/ERAF loan program. The revenue bonds issued in 2006 are secured by loan payments made by the former RDA. Therefore, this item is an enforceable obligation.
- Item Nos. 37 through 39 – Inclusionary Housing Contract and related costs in the amount of \$4.9 million. Finance continues to deny the items. Maintenance and/or administrative costs associated with the former RDA's previous housing functions are not enforceable obligations. Upon the transfer of the former RDA's housing functions to the new housing entity, HSC section 34176 requires that, "all rights, powers, duties, obligations and housing assets, ... shall be transferred" to the new housing entity. This transfer of "duties and obligations" necessarily includes the transfer of any on-going maintenance and administrative costs. To conclude that such costs should be on-going enforceable obligations of the successor agency would require a transfer of tax increment for life – directly contrary to the wind down directive in ABx1-26/AB1484. Therefore, the items are not enforceable obligations.

Additionally, the Agency contends the items are enforceable obligations because the contract with Home Bricks was authorized, on May 3, 2012, by the Oversight Board and Finance did not object within the statutory time frame. While HSC section 34178 (a) and 34180 (h) authorizes successor agencies to enter into agreements, any agreement entered into cannot conflict with the requirements set forth in HSC 34171 (d), as ABx1 26 did not specifically carve out an exception to the definition of an enforceable obligation nor did HSC section 34178 (a) or 34180 (h) not withstand HSC section 34171 (d). Therefore, the Oversight Board had no legal basis to approve an action that directly conflicted with and violated the definition of an enforceable obligation. Even if Finance did not object to the specific Oversight Board actions authorizing the Agency to enter into agreements, the statute as a whole prohibits such an action from being validated if it conflicts with the definition of an enforceable obligation. Additionally, Finance has clearly defined authority under HSC section 34177 and 34179 (h) to review any items on ROPS to determine whether or not successor agencies are responsible for the obligation listed on their ROPS. Even if an Oversight Board approved an action that created an enforceable obligation, Finance has the authority to review the enforceable obligation for compliance with HSC section 34171 (d) or for compliance with any other statutory requirements contained in Chapter 26, statutes of 2012 (AB 1484). At no time can an Oversight Board action eliminate Finance's authority to review an enforceable obligation as part of a ROPS review.

- Item No. 40 – Alameda Point Collaborative (APC) Infrastructure Agreement in the amount of \$3.6 million; no funding source identified. Finance continues to deny the item. No contract has been executed for the anticipated work to qualify item as an enforceable obligation. Moreover, based on the additional information provided, funding is predicated upon the future receipt of Low and Moderate Income Housing Funds (LMIHF). Specifically, Section 2 (b) of the agreement states that “Three Million Six Hundred Thousand Dollars (\$3,600,000) shall be met solely from the APIP Low and Moderate Income Housing Funds (20% tax-increment set-aside funds), as such funds become available over the lifetime of the APIP.” The former RDA's existence ended with the dissolution of RDAs along with the requirement to set aside 20 percent of tax increment into the LMIHF. Therefore, no funds will become available in the LMIHF and this item is not an enforceable obligation.
- Item No. 44 – Contract with AT&T in the amount of \$52,101. Finance continues to deny the item. We continue to maintain that the agreement was executed between the City of Alameda (City) and AT&T, not the former RDA. The Agency contends the item is an enforceable obligation because the City Council took action to encumber the funds of the former RDA to pay for the service rendered. However, the City Council does not have the authority to encumber RDA funds. Only an action of the former RDA's Board can encumber RDA funds. Additionally, the Agency contends the item is an enforceable obligation because the former RDA approved the funding of these costs in 2009 through the Cooperation Agreement with the City. However, HSC section 34171 (d) (2) states that agreements, contracts, or arrangements between the city, county, or city and county that created the RDA and the former RDA are not enforceable obligations. Therefore, this item is not an enforceable obligation and is not eligible for RPTTF funding.

In addition, per Finance's determination letter dated October 12, 2012, the following items not disputed by the Agency continue to be denied:

- Items Nos. 16 and 17 – Loans in the amount of \$2.3 million. HSC sections 34191.4 and 34176 (e) (6) (B) state that loan or deferral repayments shall not be made prior to the 2013-14 fiscal year. Therefore, these items are not enforceable obligations and are not eligible for Redevelopment Property Tax Trust Fund (RPTTF) funding. Upon receiving a Finding of Completion from Finance, these items may become enforceable pursuant to HSC section 34191.4 (c).

The Agency's maximum approved Redevelopment Property Tax Trust Fund (RPTTF) distribution for the reporting period is \$6,690,763 as summarized below:

Approved RPTTF Distribution Amount For the period of January through June 2013	
Total RPTTF funding requested for obligations	\$ 6,844,427
Less: Six-month total for items denied or reclassified as administrative cost	
Item 16*	0
Item 17	24,263
Item 37	55,000
Item 38	7,300
Item 39	15,000
Item 44	52,101
Total approved RPTTF for enforceable obligations	\$ 6,690,763
Plus: Allowable RPTTF distribution for administrative cost for ROPS III*	0
Total RPTTF approved:	\$ 6,690,763

* No RPTTF funding requested for the reporting period.

Pursuant to HSC section 34186 (a), successor agencies were required to report on the ROPS III form the estimated obligations and actual payments associated with the January through June 2012 period. The amount of RPTTF approved in the above table will be adjusted by the county auditor-controller to account for differences between actual payments and past estimated obligations. Additionally, these estimates and accounts are subject to audit by the county auditor-controller and the State Controller.

The amount available from the RPTTF is the same as the 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.

Except for items disallowed as noted above, Finance is not objecting to the remaining items listed in your ROPS III. Obligations deemed not to be enforceable shall be removed from your ROPS. This is Finance's final determination related to the enforceable obligations reported on your ROPS for January 1 through June 30, 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 questioned on this ROPS or a preceding ROPS.

Ms. Debbie Potter
December 18, 2012
Page 4

Please direct inquiries to Evelyn Suess, Dispute Resolution Supervisor, or Danielle Brandon, Analyst, at (916) 445-1546.

Sincerely,



STEVE SZALAY

Local Government Consultant

cc: Mr. Fred Marsh, Controller, City of Alameda
Ms. Carol S. Orth, Tax Analysis, Division Chief, County of Alameda
California State Controller's Office