



REVISED

December 21, 2012

Mr. Nelson Smith, Finance Director  
City of Bakersfield  
1600 Truxtun Avenue  
Bakersfield, CA 93301

Dear Mr. Smith:

Subject: Recognized Obligation Payment Schedule

This letter supersedes Finance's Recognized Obligation Payment Schedule (ROPS) letter dated October 1, 2012. Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of Bakersfield Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule (ROPS III) to the California Department of Finance (Finance) on August 17, 2012 for the period of January 1 through June 30, 2013. Finance issued its determination related to those enforceable obligations on October 1, 2012. 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 October 24, 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 items being disputed.

- Items Nos. 7 and 19 – HUD Section 108 loans totaling \$3.1 million. Finance no longer objects to the items. The City of Bakersfield (City) entered into loan agreements with the United States Department of Housing and Urban Development (HUD) in which the City was the borrower. For Item No. 7, through resolution No. 010-06, the former redevelopment agency (RDA) entered into an agreement with the City conveying property and providing repayment assistance for the HUD loan in order to construct a new fire station and police substation for the City. For Item No. 19, the former RDA entered into an agreement with the City to repay the HUD loan for construction of the Old Town Kern mixed-used project. Based on review of additional information provided by the Agency, the reimbursement agreements were entered into at the time of indebtedness and solely for the purpose of repaying the debt. Therefore, pursuant to HSC section 34171 (d) (2) the items are enforceable obligations and are eligible for Redevelopment Property Tax Trust Fund (RPTTF) funding.
- Items Nos. 15, 16, and 21 – Interagency loans between the City and Agency totaling \$3.6 million that were entered into in 2009 and 2010. Finance continues to deny the items at this time. Finance denied the items 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, unless issued within two years of the RDA's creation

date or for issuance of indebtedness to third-party investors or bondholders. However, the former RDA was established in 1969, and the loans are from 2009 and 2010. Finance has not issued a Finding of Completion to the Agency; therefore, as previously noted, the provisions of HSC section 34171 (d) (2) apply. Therefore, the items are currently not enforceable obligations.

- Item No. 25 – Arena Bonds in the amount of \$17 million. Finance no longer denies this item. The former RDA entered into a reimbursement agreement with the City on April 1, 1997, to provide reimbursement payments to the City from tax increment for the downtown Bakersfield redevelopment project. We note that the 1997 Certificates of Participation (COPs) were issued to refinance outstanding 1993 tax allocation bonds. Finance originally denied the item because 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. Upon review of additional information provided by the Agency, we agree that the reimbursement agreement was entered into at the time of issuance of the COPs and solely for the purpose of securing or repaying the indebtedness obligations. However, as of March 1, 2006, the City issued its 2006 Series A and B refunding COPs to refund the City's outstanding 1997 COPs. The portions of the Official Statement that were provided relating to the 2006 issuance does not reference any type of reimbursement agreement with the former RDA or mention tax increment as a source of possible payment for the 2006 COPs. Accordingly, the 1997 debt was fully and finally paid as of April 1, 2007 and the 1997 Reimbursement Agreement expired by its own terms. The Agency did not provide a reimbursement or similar agreement between the City and the former RDA associated with the 2006 COP refunding. The Agency provided the first amendment to the Reimbursement Agreement dated March 9, 2011 increasing the tax increment provided to the City from \$2.1 million to \$2.4 million annually. However, the amendment does not create an enforceable obligation because the agreement had expired when the 1997 COPs had been fully paid and the agreement was not entered into at the time of issuance of the 2006 COPs.

However, today, December 21, 2012, Finance received documentation demonstrating that on March 1, 2006 the former RDA entered into the First Amendment to Reimbursement Agreement dated April 1, 1997. Finance notes, the former RDA entered into two First Amendments to the April 1, 1997 Reimbursement Agreement. While Finance continues to assert the First Amendment dated March 11, 2011 is not an enforceable obligation, Finance determines the First Amendment dated March 1, 2006 is an enforceable obligation because it is an agreement entered into at the time of issuance and solely for the purpose of securing or repaying indebtedness. Per the enforceable obligation approved for this Item, the maximum payment is \$1.2 million annually. The Agency requested a total of \$1.7 million for the fiscal year; per our letter dated May 30, 2012, \$850,000 was approved for the July through December 2012 period. Therefore, Finance is adjusting the amount requested for this ROPS III period from \$850,000 to \$350,000, which is the remaining balance due during the fiscal year.

- Items Nos. 24, 35, and 36 – Park 20<sup>th</sup> Senior Housing project in the amount of \$3 million and Millcreek Courtyard Senior Residence agreement in the amount of \$1.2 million. Finance continues to deny the items. Finance denied the items because HSC section 34163 (b) prohibits a RDA from entering into a contract with any entity after June 27, 2011. At the time of review, it was our understanding that no contract was in place for Item 24, and the agreement entered into on July 18, 2012 for Items 35 and 36 is between the City and Chelsea Investment Corporation and the former RDA is not a party

to the agreement. The Agency contends that a Prop 1C grant requires the completion of these projects and therefore these items are enforceable obligations as these items are in furtherance of the Prop 1C grant obligation that existed prior to June 28, 2011. Additionally, the Agency further believes that pursuant to HSC 34171 (d) (1) (C), "...preexisting obligation to the state or obligations imposed by state law..." makes these projects enforceable obligations. HSC 34171 (d) (1) (C) deals with "payments" of "...preexisting obligations or obligations imposed by state law..." For payments to exist, a contract must have been entered into for the projects. However, there were no contracts prior to June 28, 2011 for these projects. Furthermore, being the recipient of a grant in and of itself does not mean that that the Agency is required to enter into other agreements in violation of the definition of an enforceable obligation. Therefore, the items are not enforceable obligations and are not eligible for funding from the Low and Moderate Income Housing Fund or RPTTF.

Additionally, we note that the entity assuming the housing functions of the former RDA may retain the housing assets and may take on further development on its own as the Grant Agreement is not an enforceable obligation of the Agency for the housing development. The new housing entity is provided an opportunity to seek certain extensions from the Department of Housing and Community Development (HCD), but if they fail to provide the vertical housing development, the grant will likely need to be repaid to HCD. Additionally, we note that based on the 10<sup>th</sup> "Whereas" paragraph in the DDA, the City owns the real property to be developed and "holds housing funds for the dissolved [RDA] set aside for the Project."

The Agency's maximum approved RPTTF distribution for the reporting period is: \$3,261,011 as summarized below:

<b>Approved RPTTF Distribution Amount</b>	
<b>For the period of January through June 2013</b>	
Total RPTTF funding requested for obligations	\$ 4,136,011
Less: Six-month total for item(s) denied or reclassified as administrative cost	
Item 15	0 *
Item 16	0 *
Item 21	0 *
Item 24	500,000
Item 25	500,000 **
Total approved RPTTF for enforceable obligations	\$ 3,136,011
Plus: Allowable RPTTF distribution for administrative cost for ROPS III	125,000
<b>Total RPTTF approved:</b>	<b>\$ 3,261,011</b>
* No payments requested for the reporting period	
** Represents portion denied (\$850,000 - \$350,000)	

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.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Szalay', is written over a horizontal line.

STEVE SZALAY  
Local Government Consultant

cc: Ms. Leslie Simpson, Accounting Supervisor, City of Bakersfield  
Ms. Ann K. Barnett, Auditor-Controller, County of Kern  
California State Controller's Office