



December 18, 2012

Ms. Debra Auker, Chief Financial Officer  
City of Emeryville  
1333 Park Avenue  
Emeryville, CA 94608

Dear Ms. Auker:

Subject: Recognized Obligation Payment Schedule

This letter supersedes Finance's Recognized Obligation Payment Schedule (ROPS) letter dated October 5, 2012. Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of Emeryville Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule (ROPS III) to the California Department of Finance (Finance) on August 24, 2012 for the period of January 1 through June 30, 2013. Finance issued its determination related to those enforceable obligations on October 5, 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 November 9, 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.

- Items Nos. 12 through 14 and 21 – Christie Avenue Project costs in the amount of \$9 million of Redevelopment Property Tax Trust Fund (RPTTF), Low-Mod Income Housing Fund (LMIHF), and Other funding. Finance continues to deny the items. Finance denied the items as HSC 34163 (c) states the Agency shall not amend or modify existing agreements, obligations, or commitments with any entity, for any purpose after June 27, 2011. These items are related to the acquisition of two properties. The purchase and sale agreement did not identify the purchase amounts and section 8.1.7 (b) of the agreement stated that if closing did not occur by August 31, 2011, the agreement would automatically terminate. The agreement was modified on September 21, 2011 to extend the closing date deadline to November 2011 and the properties were acquired the same month.

The Agency contends Items 12 through 14 are enforceable obligations because in the Meet And Confer request the Agency states that "thereafter [after June 7, 2011], based on direction provided by the Agency Board, the parties, through counsel, further agreed that the Agency's environmental condition would remain open for so long as the parties were engaged in active discussions with respect to a possible credit based on the environmental condition of the Property. Thus, before the enactment of Assembly Bill 26, the parties *effectively* waived the provisions of Section 8.1 of the Contract regarding automatic termination." (Emphasis added.) This assertion of "effective waiver" has no document attached to back up the manifestation of the waiver (or when it may have occurred). Furthermore, on September 21, 2011, the Agency Board met in closed

session and provided direction to its counsel, who advised the Sellers via email that the Agency agreed to (1) accept a \$500,000 credit for environmental conditions and (2) extend the date for close of escrow to October 10, 2011. The extension was formally approved in September 2011 when the Board no longer had the authority to amend agreements. Therefore, the agreement terminated by its own terms on August 31, 2011 and is not an enforceable obligation.

The Agency contends Item 21 is an enforceable obligation because project management costs of the City of Emeryville (City) as housing successor for development of affordable housing is a statutory obligation of the City under the Community Redevelopment Law. However, per HSC section 34176 (a) (1), if a city, county, or city and county elects to retain the authority to perform housing functions previously performed by a RDA, all rights, powers, duties, obligations, and housing assets, excluding any amounts on deposit in the Low and Moderate Income Housing Fund and enforceable obligations retained by the successor agency, shall be transferred to the city, county, or city and county. So, any costs associated with management of projects that were transferred to the housing successor agency are now the obligation of the housing successor agency, not the successor agency. Therefore, Item 21 is not an enforceable obligation.

- Items Nos. 5, 7, 19, and 31 – Contracts for Services in the amount of \$14,880 of RPTTF and LMIHF. Finance continues to deny Items 5, 7, and 19 and \$2,496 of Item 31 and no longer objects to \$3,744 of Item 31. Finance denied the items as HSC section 34163 (b) prohibits a RDA from entering into a contract with any entity after June 27, 2011. Contracts for these items were either signed after June 27, 2011, or no contract has yet been executed. Furthermore, the contract for Item 5 was executed by the City and do not identify the former RDA as a party to the contract.

The Agency contends Item 5 is an enforceable obligation because on February 7, 2012, the City Council, as the owner of the housing asset, adopted Resolution No. 12-28 and awarded a contract to Evans Brothers in the amount of \$196,840 for the demolition of structures located at 3706 San Pablo Avenue and 1025 West MacArthur Blvd and the demolition contract was accepted as complete by the City Council on July 17, 2012 pursuant to Resolution No. 12-129. The Agency contends the Items 7 and 19 are enforceable obligations because the contracts between the Agency and Peralta Service Corporation were approved by the former RDA on August 16, 2011, and September 20, 2011, respectively, pursuant to Resolution No. CD 10-11 and Resolution No. CD 15-11, respectively. The Agency contends Item 31 is an enforceable obligation because the contract with Arthur Young Debris Removal is to provide for abatement of garbage and debris dumped at parcels of real property that are either affordable housing or non-housing assets of the Agency. Based on the list of properties from the Amended Maintenance Proposal dated January 30, 2012, 40 percent of the properties are housing assets that were transferred. However, per HSC section 34176 (a) (1), if a city, county, or city and county elects to retain the authority to perform housing functions previously performed by a RDA, all rights, powers, duties, obligations, and housing assets, excluding any amounts on deposit in the LMIHF and enforceable obligations retained by the successor agency, shall be transferred to the city, county, or city and county. So, any costs associated with assets transferred to the housing successor agency are now the obligation of the housing successor agency and not the successor agency. Therefore, Items 5, 7, and 19 and \$2,496 of Item 31 and are not enforceable obligations.

However, per HSC section 34171 (d) (1) (F), the costs of maintaining assets prior to disposition are enforceable obligations. Since 60 percent of the properties for Item 31 are non-housing assets, \$3,744 of Item 31 is an enforceable obligation.

- Items Nos. 84 and 85 – Excess Bond Proceeds Obligations in the amount of \$24.5 million of Bond funding. Finance continues to deny the items at this time. Finance denied the items as no contracts had been executed to establish the items as enforceable obligations. Furthermore, HSC section 34191.4 (c) (1) states that until Finance has issued a finding of completion, bond proceeds derived from bonds issued on or before December 31, 2010, shall be used for the purposes for which the bonds were sold. Finance has not issued a finding of completion to the Agency. The Agency contends the items are enforceable obligations because the Emeryville Arts and Cultural Center, Emeryville Center of Community Life, South Bayfront Pedestrian/Bicycle Bridge and Horton Landing Park, and Transit Center Public Parking were all identified as appropriate redevelopment projects. However, no contracts had been executed prior to June 27, 2011. Therefore, the items are not eligible for bond funding at this time. However, successor agencies will be eligible to expend bonds issued prior to January 1, 2011 once a finding of completion is received per HSC section 34191.4 (c). Finance encourages the Agency to place these obligations on subsequent ROPS for approval.

In addition, per Finance's ROPS letter dated October 5, 2012, the following items not disputed by the Agency continue to be denied:

- Item Nos. 15 through 18 – Christie Avenue Project costs in the amount of \$94,350 of LMIHF. HSC 34163 (c) states the Agency shall not amend or modify existing agreements, obligations, or commitments with any entity, for any purpose after June 27, 2011. These items related to the acquisition of two properties. The purchase and sale agreement did not identify the purchase amounts and section 8.1.7 (b) of the agreement stated that if closing did not occur by August 31, 2011 the agreement would automatically terminate. The agreement was modified on September 21, 2011 to extend the closing date deadline to November 2011, and the properties were acquired the same month.
- Item Nos. 20, 22, 32, 33, 35 and 83 – Contracts for Services in the amount of \$92,000 of RPTTF, LMIHF, and Other funding. HSC section 34163 (b) prohibits a RDA from entering into a contract with any entity after June 27, 2011. Contracts for these items were either signed after June 27, 2011 or no contract has yet been executed. Furthermore, the contracts for items 5, 22, 33, and 35 were executed by the City and do not identify the former RDA as a party to the contracts.
- Administrative costs claimed for RPTTF exceed the allowance by \$216,777. HSC section 34171 (b) limits administrative expenses for the fiscal year 2012-13 to three percent of property tax allocated to the successor agency or \$250,000, whichever is greater. The City claimed \$452,842 in administrative costs for the January through June 2013 period; however, only \$236,065 is allowable pursuant to the cap. Therefore, \$216,777 of excess administrative cost claimed is not allowed.

The Agency's maximum approved RPTTF distribution for the reporting period is: \$7,929,303 as summarized in the following table:

<b>Approved RPTTF Distribution Amount For the period of January through June 2013</b>	
Total RPTTF funding requested for obligations	\$ 7,754,234
Less: Six-month total for items denied or reclassified as administrative cost	
Item 21	23,100
Items 31 (portion denied), 32, 33, 35	37,896
Total approved RPTTF for enforceable obligations	\$ 7,693,238
Plus: Allowable RPTTF distribution for administrative cost for ROPS III	236,065
<b>Total RPTTF approved:</b>	<b>\$ 7,929,303</b>

<b>Administrative Cost Calculation</b>	
Total RPTTF for the period July through December 2012	\$ 8,698,560
Total RPTTF for the period January through June 2013	7,693,238
<b>Total RPTTF for fiscal year 2012-13:</b>	<b>\$ 16,391,798</b>
Allowable administrative cost for fiscal year 2012-13 (Greater of 3% or \$250,000)	491,754
Administrative allowance for the period of July through December 2012	255,689
<b>Allowable RPTTF distribution for administrative cost for ROPS III:</b>	<b>\$ 236,065</b>

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 Mary Halterman, Analyst at (916) 445-1546.

Sincerely,



Steve Szalay  
Local Government Consultant

cc: On following page

Ms. Debra Auker  
December 18, 2012  
Page 5

cc: Mr. Michael G. Biddle, City Attorney, City of Emeryville  
Ms. Paula S. Crow, Attorney, Stein & Lubin LLP  
Ms. Carol S. Orth, Division Chief, Tax Analysis, County of Alameda  
California State Controller's Office